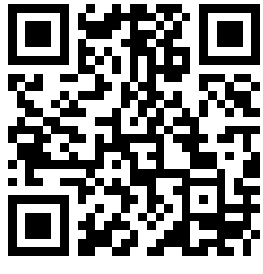
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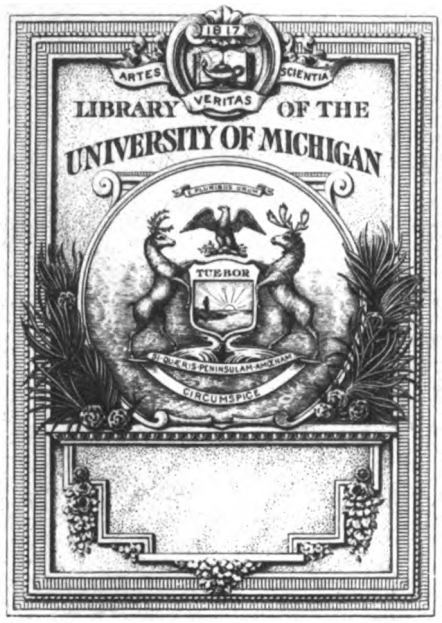
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U.S. Laws, Statutes, etc

62D CONGRESS, 3d Session } SENATE { DOCUMENT No. 1093

# THE COMPILED LAWS OF THE TERRITORY OF ALASKA 1913

COMPILED, CODIFIED, ARRANGED AND ANNOTATED

AND

PUBLISHED UNDER AUTHORITY OF THE ACT OF CONGRESS OF AUGUST 24, 1912

BY

THE JOINT COMMITTEE ON TERRITORIES OF THE SENATE AND HOUSE OF REPRESENTATIVES

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WASHINGTON
GOVERNMENT PRINTING OFFICE
1913

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SENATE CONCURRENT RESOLUTION No. 38.

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed 4,000 copies of the laws of the United States applicable to the Territory of Alaska, compiled by the Committee on Territories of the Senate and the Committee on the Territories of the House of Representatives in compliance with Public Act No. 334, 1,500 copies of which shall be for the use of the Senate and 2,500 copies for the use of the House of Representatives.

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## EXPLANATION OF ABBREVIATIONS.

| | |
|---|---|
| C. C. A. | Circuit Court of Appeals Reports. |
| Fed. | Federal Reporter. |
| F. S. A. | Federal Statutes Annotated. |
| L. R. A. | Lawyers' Reports Annotated. |
| Or. | Oregon Reports. |
| Pac. | Pacific Reports. |
| R. S. | Revised Statutes of the United States. |
| Supp. | Supplements to Revised Statutes. |
| Stat. L. | Statutes at Large. |



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## PREFACE.

This compilation of the laws of the United States relating to the Territory of Alaska was undertaken at the instance of the undersigned and includes all the statutes enacted by Congress, the decisions of the various courts arising thereunder, and the regulations of the various departments of the Government relating thereto. The Alaska laws had never been completely compiled, codified, nor annotated, and this work was quite necessary to the proper administration of justice in the Territory. The work includes all laws enacted by Congress prior to the Sixty-third Congress, and the subdivisions have been carefully scrutinized by the heads of the various departments of the Government having special jurisdiction over Alaskan affairs and have received their approval. After the work had been partially completed, and to give it congressional approval, an amendment to Senate bill 1647, providing civil government for Alaska, directed that this work should be carried to completion under the joint supervision of the Senate and House Committees on Territories. This task has been completed, and the committee acknowledges its indebtedness to Frank T. Wolcott, Esq., F. C. Moon, Esq., and V. E. Van Ameringen, Esq., for their painstaking assistance in bringing this work to a conclusion, and we express the hope that it may be useful as a means of ready and accurate reference to the important subjects contained herein.

WILLIAM ALDEN SMITH.



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# DECLARATION OF INDEPENDENCE.

IN CONGRESS JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

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He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives or our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow-Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legis-

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lature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the REPRESENTATIVES of the UNITED STATES OF AMERICA, IN GENERAL CONGRESS, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly PUBLISH and DECLARE, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, We mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

(The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:)

JOHN HANCOCK.

*New Hampshire.*

JOSIAH BARTLETT,
WM. WHIPPLE,
MATTHEW THORNTON.

*Massachusetts Bay.*

SAML. ADAMS,
JOHN ADAMS,
ROBT. TREAT PAINE,
ELBRIDGE GERRY.

*Rhode Island, etc.*

STEP. HOPKINS,
WILLIAM ELLERY.

*Connecticut.*

ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

*New York.*

WM. FLOYD,
PHIL. LIVINGSTON,
FRANS. LEWIS,
LEWIS MORRIS.

*New Jersey.*

RICHD. STOCKTON,
JNO. WITHERSPOON,
FRAS. HOPKINSON,
JOHN HART,
ABRA. CLARK.

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*Pennsylvania.*

ROBT. MORRIS,
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,
JAS. SMITH,
GEO. TAYLOR,
JAMES WILSON,
GEO. ROSS.

*Delaware.*

CESAR RODNEY,
GEO. READ.
THO. M'KEAN.

*Maryland.*

SAMUEL CHASE,
WM. PACA,
THOS. STONE,
CHARLES CARROLL of Carrollton.

*Virginia.*

GEORGE WYTHE,
RICHARD HENRY LEE,
TH JEFFERSON,
BENJA. HARRISON,
THOS. NELSON, jr.
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

*North Carolina.*

WM. HOOPER,
JOSEPH HEWES,
JOHN PENN.

*South Carolina.*

EDWARD RUTLEDGE,
THOS. HEYWARD, junr.,
THOMAS LYNCH, junr.,
ARTHUR MIDDLETON.

*Georgia.*

BUTTON GWINNETT,
LYMAN HALL,
GEO. WALTON.

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# CONSTITUTION OF THE UNITED STATES OF AMERICA.*

**WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.**

Decisions of the Supreme Court of the United States relating to the preamble are:

Chisholm *v.* Georgia (2 Dall., 419). McCulloch *v.* State of Maryland et al. (4 Wh., 316). Brown et al. *v.* Maryland (12 Wh., 419). Barron *v.* The Mayor and City Council of Baltimore (7 Pet., 243). Dred Scott *v.* Sandford (19 Howard, 393). Lane County *v.* Oregon (7 Wall., 71). Texas *v.* White et al. (7 Wall., 700). Claflin *v.* Houseman, assignee (93 U. S., 130). Williams *v.* Bruffy (96 U. S., 176). Tennessee *v.* Davis (100 U. S., 257). Langford *v.* United States (101 U. S., 341). United States *v.* Jones (109 U. S., 513). Fort Leavenworth Railroad Co. *v.* Lowe (114 U. S., 525). The Chinese Exclusion Case (130 U. S., 581). Geofroy *v.* Riggs (133 U. S., 258). In re Neagle (135 U. S., 1). In re Ross (140 U. S., 453). Logan *v.* United States (144 U. S., 263). Lascelles *v.* Georgia (148 U. S., 537). In re Tyler (149 U. S., 164). Fong Yue Ting *v.* United States (149 U. S., 698). United States *v.* E. C. Knight Co. (156 U. S., 1). Mattox *v.* United States (156 U. S., 237). In re Quarles and Butler (158 U. S., 532). In re Debs, petitioner (158 U. S., 564). Ward *v.* Race Horse (163 U. S., 504). De Lima *v.* Bidwell (182 U. S., 1). Prout *v.* Starr (188 U. S., 537). Jacobson *v.* Massachusetts (197 U. S., 11). South Carolina *v.* United States (199 U. S., 437). Ellis *v.* U. S. (206 U. S., 246). Dick *v.* U. S. (208 U. S., 340). Muller *v.* Oregon (208 U. S., 412).

* In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."



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## ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Congress has power to authorize the President to make regulations prohibiting the importation of pure spirits into Alaska under such penalties as Congress may have prescribed. (*The Louisa Simpson*, 2 Saw., 57.)

Hayburn's Case (notes) (2 Dall., 409). Field *v.* Clark (143 U. S., 649). Union Bridge Co. *v.* United States (204 U. S., 364). United States *v.* Heinszen (206 U. S., 370). St. Louis & Iron Mountain Railway *v.* Taylor (210 U. S., 281). Monongahela Bridge Co. *v.* United States (216 U. S., 177). United States *v.* Grimaud (216 U. S., 614).

SECTION 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Ex parte Yarbrough (110 U. S., 651). Sinkler (179 U. S., 58). In re Green (134 U. S., 377). Wiley *v.*

[2] No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] *[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

*The last apportionment under the act of 1901, was made on the basis of one Representative for 192,182 of population.

Dred Scott *v.* Sandford (19 Howard, 393). Veazie Bank *v.* Fenno (8 Wall., 533). Scholey *v.* Rew (23 Wall., 331). De Treville *v.* Smalls (98 U. S., 517). Gibbons *v.* District of Columbia (116 U. S., 404). Pollock *v.* Farmers' Loan & Trust Co. (Income Tax case) (157 U. S., 429). Pollock *v.* Farmers' Loan & Trust Co. (Rehearing) (158 U. S., 601). Thomas *v.* United States (192 U. S., 363).

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated

*The clause included in brackets is amended by the fourteenth amendment, second section, p. 229.

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at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall choose their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Ex parte Siebold (100 U. S., 371). Ex parte Clarke (100 U. S., 399). Ex parte Yarbrough (110 U. S., 651). United States *v.* Waddell et al. (112 U. S., 76). In re Coy (127 U. S., 731).

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

In re Loney (134 U. S., 372). United States *v.* Ballin (144 U. S., 1).

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Anderson *v.* Dunn (6 Wh., 204). Kilbourn *v.* Thompson (103 U. S., 168). U. S. *v.* Ballin (144 U. S., 1). In re Chapman (166 U. S., 661).

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid

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out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Coxe *v.* McClenachan (3 Dall., 478). Kilbourn *v.* Thompson (103 U. S., 168). | Williamson *v.* U. S. (207 U. S., 425).

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Field *v.* Clark (143 U. S., 649). Twin City Bank *v.* Nebeker (167 U. S., 196). | Millard *v.* Roberts (202 U. S., 429).

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Field *v.* Clark (143 U. S., 649). United States *v.* Ballin (144 U. S., 1). Fourteen | Diamond Rings *v.* United States (183 U. S., 176).

SECTION 8. The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Hylton *v.* United States (3 Dall., 171). McCulloch *v.* State of Maryland (4 Wh., 316). Loughborough *v.* Blake (5 Wh., 317). Osborn *v.* Bank of the United States (9 Wh., 738). Weston et al. *v.* City Council of Charleston (2 Pet., 449). Dobbins *v.* The Commissioners of Erie County (16 Pet., 435). License Cases (5 How., 504). Cooley *v.* Board of Wardens of Port of Philadelphia et al. (12 How., 299). McGuire *v.* The Commonwealth (3 Wall., 387). Van Allen *v.* The Assessors (3 Wall., 573). Bradley *v.* The People (4 Wall., 459). License Tax Cases (5 Wall., 462). Pervear *v.* The Commonwealth (5 Wall., 475). Woodruff *v.* Parham (8 Wall., 123). Hinson *v.* Lott (8 Wall., 148). Veazie Bank *v.* Fenno (8 Wall., 533). The Collector *v.* Day (11 Wall., 113). United States *v.* Singer (15 Wall., 111). State Tax on Foreign-held Bonds (15 Wall., 300). United States *v.* Rail-

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road Company (17 Wall., 322). Railroad Company *v.* Peniston (18 Wall., 5). Scholey *v.* Rew (23 Wall., 331). Springer *v.* United States (102 U. S., 586). Legal Tender Case (110 U. S., 421). California *v.* Central Pacific Railroad Co. (127 U. S., 1). Ratterman *v.* Western Union Telegraph Co. (127 U. S., 411). Leloup *v.* Port of Mobile (127 U. S., 640). Field *v.* Clark (143 U. S., 649). Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429). United States *v.* Realty Co. (163 U. S., 427). Nicol *v.* Ames (173 U. S., 509). Knowlton *v.* Moore (178 U. S., 41). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* United States (182 U. S., 222). Downes *v.* Bidwell (182 U. S., 244). Fourteen Diamond Rings *v.* United States (183 U. S., 176). Felsenheld *v.* United States (186 U. S., 126). Thomas *v.* United States (192 U. S., 363). Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397). Binns *v.* United States (194 U. S., 486). South Carolina *v.* United States (199 U. S., 437). Kansas *v.* Colorado (206 U. S., 46). Flaherty *v.* Hanson (215 U. S., 515).

[2] To borrow money on the credit of the United States;

McCulloch *v.* The State of Maryland (4 Wh., 316). Weston et al. *v.* The City Council of Charleston (2 Pet., 449). Bank of Commerce *v.* New York City (2 Black, 620). Bank Tax Cases (2 Wall., 200). The Banks *v.* The Mayor, 7 (Wall., 16). Bank *v.* Supervisors (7 Wall., 26). Hepburn *v.* Griswold (8 Wall., 603). National Bank *v.* Commonwealth (9 Wall., 353). Parker *v.* Davis (12 Wall., 457). Legal Tender Case (110 U. S,, 421). Home Insurance Company *v.* New York (134 U. S., 594). Home Savings Bank *v.* Des Moines (205 U. S., 503).

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Gibbons *v.* Ogden (9 Wh., 1). Brown et als. *v.* State of Maryland (12 Wh., 419). Wilson et al. *v.* Black Bird Creek Marsh Company (2 Pet., 245). Worcester *v.* The State of Georgia (6 Pet., 515). City of New York *v.* Miln (11 Pet., 102). United States *v.* Coombs (12 Pet., 72). Holmes *v.* Jennison et al. (14 Pet., 540). License Cases (5 How., 504). Passenger Cases (7 How., 283). Nathan *v.* Louisiana (8 How., 73). Mager *v.* Grima et al. (8 How., 490). United States *v.* Marigold (9 How., 560). Cowley *v.* Board of Wardens of Port of Philadelphia (12 How., 299). The Propeller Genesee Chief et al. *v.* Fitzhugh et al. (12 How., 443). State of Pennsylvania *v.* The Wheeling Bridge Co. (13 How., 518). Veazie et al. *v.* Moore (14 How., 568). Smith *v.* State of Maryland (18 How., 71). State of Pennsylvania *v.* The Wheeling and Belmont Bridge Co. et al. (18 How., 421). Sinnitt *v.* Davenport (22 How., 227). Foster et al. *v.* Davenport et al. (22 How., 244). Conway et al. *v.* Taylor's Ex. (1 Black, 603). United States *v.* Holliday (3 Wall., 407). Gilman *v.* Philadelphia (3 Wall., 713). The Passaic Bridges (3 Wall., 782). Steamship Company *v.* Port Wardens (6 Wall., 31). Crandall *v.* State of Nevada (6 Wall., 35). White's Bank *v.* Smith (7 Wall., 646). Waring *v.* The Mayor (8 Wall., 110). Paul *v.* Virginia (8 Wall., 168). Thomson *v.* Pacific Railroad (9 Wall., 579). Downham et al. *v.* Alexandria Council (10 Wall., 173). The Clinton Bridge (10 Wall., 454). The Daniel Ball (10 Wall., 557). Liverpool Insurance Company *v.* Massachusetts (10 Wall., 566). The Montello (11 Wall., 411). Ex parte McNiel (13 Wall., 236). State Freight Tax (15 Wall., 232). State Tax on Railway Gross Receipts (15 Wall., 284). Osborn *v.* Mobile (16 Wall., 479). Railroad Company *v.* Fuller (17 Wall., 560). Bartemeyer *v.* Iowa (18 Wall., 129). The Delaware Railroad Tax (18 Wall., 206). Peete *v.* Morgan (19 Wall., 581). Railroad Company *v.* Richmond (19 Wall., 584). B. and O. Railroad Company *v.* Maryland (21 Wall., 456). The Lottawanna (21 Wall., 558). Henderson et al. *v.* The Mayor of the City of New York (92 U. S., 259). Chy Lung *v.* Freeman et al. (92 U. S., 275). South Carolina *v.* Georgia et al. (93 U. S., 4). Sherlock et al. *v.* Alling, adm. (93 U. S., 99). United States *v.* Forty-three Gallons of Whisky, etc. (93 U. S., 188). Foster *v.* Master and Wardens of the Port of New Orleans (94 U. S., 246). Railroad Co. *v.* Husen (95 U. S., 465). Pensacola Tel. Co. *v.* W. U. Tel. Co. (96 U. S., 1). Beer Co. *v.* Massachusetts (97 U. S., 25). Cook *v.* Pennsylvania (97 U. S., 566). Packet Co. *v.* St. Louis (100 U. S., 423). Wilson *v.* McNamee (102 U. S., 572). Moran *v.* New Orleans (112 U. S., 69). Head Money Cases (112 U. S., 580). Cooper Mfg. Co. *v.* Ferguson (113 U. S., 727). Gloucester Ferry Co. *v.* Pennsylvania (114 U. S., 196). Brown *v.* Houston (114 U. S., 622). Walling *v.* Michigan (116 U. S., 446). Pickard *v.* Pullman Southern Car Co. (117 U. S., 34). Tennessee *v.* Pullman Southern Car Co. (117 U. S., 51). Spraigue *v.* Thompson (118 U. S., 90). Morgan *v.* Louisiana (118 U. S., 455). Wabash, St. Louis and Pacific Ry. *v.* Illinois (118 U. S., 557). Huse *v.* Glover (119 U. S., 543). Robbins *v.* Shelby Co. Taxing Dist. (120 U. S., 489). Corson *v.* Maryland (120 U. S., 502). Barron *v.* Burnside (121 U. S., 186). Fargo *v.* Michigan (121 U. S., 230). Ouachita Packet Co. *v.* Aiken (121 U. S., 444). Phila. and Southern S. S. Co. *v.* Penna. (122 U. S., 326). W. U. Tel. Co. *v.* Pendleton (122 U. S., 347). Sands *v.* Manistee River Imp. Co. (123 U. S., 288). Smith *v.* Alabama (124 U. S., 465). Willamette Iron Bridge Co. *v.* Hatch (125 U. S., 1). Pembina Mine Co. *v.* Penna. (125 U. S., 181). Bowman *v.* Chicago Northwestern Rwy. Co. (125 U.

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S., 465). Western Union Tel. Co. *v.* Mass. (125 U. S., 530). California *v.* Central Pacific R. R. Co. (127 U. S., 1). Leloup *v.* Port of Mobile (127 U. S., 640). Kidd *v.* Pearson (128 U. S., 1). Asher *v.* Texas (128 U. S., 129). Stoutenberg *v.* Hennick (129 U. S., 141). Western Union Tel. Co. *v.* Alabama (132 U. S., 472). Fritts *v.* Palmer (132 U. S., 282). Louisville, N. O., &c., Railway *v.* Mississippi (113 U. S., 587). Leisy *v.* Hardin (135 U. S., 100). Lyng *v.* Michigan (135 U. S., 161). Cherokee Nation *v.* Kansas Railway Co. (135 U. S., 641). McCall *v.* California (136 U. S., 104). Norfolk & Western R. Rd. *v.* Pennsylvania (136 U. S., 114). Minnesota *v.* Barber (136 U. S., 313). Texas & Pacific Ry. Co. *v.* Southern Pacific Co. (137 U. S., 48). Brimmer *v.* Rebman (138 U. S., 78). Manchester *v.* Mass. (139 U. S., 240). In re Rahrer (140 U. S., 545). Pullman Palace Car Co. *v.* Penna. (141 U. S., 18). Pullman Palace Car Co. *v.* Hayward (141 U. S., 36). Mass. *v.* West'n Union Tel. Co. (141 U. S., 40). Crutcher *v.* Kentucky (141 U. S., 47). Henderson Bridge Co. *v.* Henderson (141 U. S., 679). In re Garnett (141 U. S., 1). Maine *v.* Grand Trunk Ry. Co. (142 U. S., 217). Nishimura Ekiu *v.* U. S. (142 U. S., 651). Pacific Ex. Co. *v.* Seibert (142 U. S., 339). Horn Silver Mining Co. *v.* New York (143 U. S., 305). Chic. & Grand Trunk Ry. Co. *v.* Wellman (143 U. S., 339). Budd *v.* N. Y. (143 U. S., 517). Ficklen *v.* Shelby Co. Taxing Dist. (145 U. S., 1). Lehigh Valley R. Rd. *v.* Pennsylvania (145 U. S., 192). Interstate Commerce Comm'n *v.* B. & O. R. Rd. (145 U. S., 264). Brennan *v.* Titusville (153 U. S., 289). Brass *v.* Stoeser (153 U. S., 391). Ashley *v.* Ryan (153 U. S., 436). Luxton *v.* N. River Bridge Co. (153 U. S., 529). Erie R. Rd. *v.* Penna. (153 U. S., 628). Postal Tel. Cable Co. *v.* Charleston (153 U. S., 692). Covington & Cinc'ti Bridge Co. *v.* Ky. (154 U. S., 204). Plumley *v.* Mass. (155 U. S., 461). Texas & Pacific Rwy. Co. *v.* Interstate Transfer Co. (155 U. S., 585). Hooper *v.* Calif. (155 U. S., 648). Postal Tel. Cable Co. *v.* Adams (155 U. S., 688). U. S. *v.* E. C. Knight & Co. (156 U. S., 1). Ernest *v.* Missouri (156 U. S., 296). N. Y., L. E. & West'n *v.* Penna. (158 U. S., 431). Pittsburgh & So. Coal Co. *v.* Bates (156 U. S., 577). Pittsburgh & So. Coal Co. *v.* La. (156 U. S., 590). Gulf, Colo. & S. F. Rwy. Co. *v.* Hefley (158 U. S., 98). In re Debs (158 U. S., 564). Geer *v.* Conn. (161 U. S., 519). Louisville, &c., R. R. Co. *v.* Kentucky (161 U. S., 677). Western Union Telegraph Co. *v.* James (162 U. S., 650). Western Union Telegraph Co. *v.* Taggart (163 U. S., 1). Illinois Cent. R. R. Co. *v.* Illinois (163 U. S., 142). Hennington *v.* Georgia (163 U. S., 299). Osborne *v.* Florida (164 U. S., 650). Scott *v.* Donald (165 U. S., 58). Adams Ex. Co. *v.* Ohio (165 U. S., 194). New York, &c., R. R. Co. *v.* New York (165 U. S., 628). Henderson Bridge Co. *v.* Kentucky (166 U. S., 150). Adams Exp. Co. *v.* Kentucky (166 U. S., 171). Gladson *v.* Minn. (166 U. S., 427). Chicago, &c., Ry. Co. *v.* Solan (169 U. S., 133). Missouri, &c., Ry. Co. *v.* Haber (169 U. S., 613). Richmond, &c., R. R. Co. *v.* Patterson (169 U. S., 311). Rhodes *v.* Iowa (170 U. S., 412). Vance *v.* Vandercook (170 U. S., 438). Schollenberger *v.* Pa. (171 U. S., 1). Collins *v.* N. H., (171 U. S., 30). Patapsco Guano Co. *v.* N. C. (171 U. S., 345). New York *v.* Roberts (171 U. S., 658). Lake Shore, &c., Ry. Co. *v.* Ohio (173 U. S., 285). Nicol *v.* Ames (173 U. S., 509). Missouri, &c., Ry. Co. *v.* McCann (174 U. S., 580). Addyston Pipe & Steel Co. *v.* U. S. (175 U. S., 211). Lindsay & Phelps Co. *v.* Mullen (176 U. S., 126). Williams *v.* Fears (179 U. S., 270). Wisconsin, &c., R. R. Co. *v.* Jacobson (179 U. S., 287). Chesapeake, &c., Ry. Co. *v.* Kentucky (179 U. S., 388). Cargill *v.* Minnesota (180 U. S., 452). Rasmussen *v.* Idaho (181 U. S., 198). Smith *v.* St. Louis, &c., Ry. Co. (181 U. S., 248). Capital City Dairy Co. *v.* Ohio (183 U. S., 238). Louisville, &c., R. R. Co. *v.* Kentucky (183 U. S., 503). Louisville, &c., R. R. Co. *v.* Eubank (184 U. S., 27). Stockard *v.* Morgan (185 U. S., 27). Reid *v.* Colorado (187 U. S., 137). Telegraph Co. *v.* New Hope (187 U. S., 419). Hanley *v.* Kansas City Southern Ry. Co. (187 U. S., 617). Caldwell *v.* North Carolina (187 U. S., 622). Kelley *v.* Rhoads (188 U. S., 1). Diamond Match Co. *v.* Ontonagon (188 U. S., 82). Lottery Case (188 U. S., 321). Pullman Co. *v.* Adams (189 U. S., 420). Atlantic, &c., Tel. Co. *v.* Philadelphia (190 U. S., 160). Patterson *v.* Bark *Eudora* (190 U. S., 169). Western Union Tel. Co. *v.* Gottlieb (190 U. S., 412). Allen *v.* Pullman Co. (191 U. S., 171). Arbuckle *v.* Blackburn (191 U. S., 405). Pennsylvania R. R. Co. *v.* Hughes (191 U. S., 477). Pennsylvania R. R. Co. *v.* Knight (192 U. S., 21). Crossman *v.* Lurman (192 U. S., 189). St. Clair County *v.* Interstate Transfer Co (192 U. S., 454). Buttfield *v.* Stranahan (192 U. S., 470). American Steel & Wire Co. *v.* Speed (192 U. S., 500). Northern Securities Co. *v.* United States (193 U. S., 197). Fargo *v.* Hart (193 U. S., 490). Field *v.* Barber Asphalt Co. (194 U. S., 618). Central of Georgia Ry. Co. *v.* Murphey (196 U. S., 194). Cook *v.* Marshall County (196 U. S., 261). Pabst Brewing Co. *v.* Crenshaw (198 U. S., 17). Foppiano *v.* Speed (199 U. S., 501). Houston & Texas Cent. R. R. *v.* Mayes (201 U. S., 321). McNeill *v.* Southern Ry. Co. (202 U. S., 543). New Mexico ex rel. McLean & Co. *v.* Denver, etc., R. R. Co. (203 U. S., 38). Heymann *v.* Southern R. R. Co. (203 U. S., 270). Martin *v.* Pittsburg & Lake Erie R. R. Co. (203 U. S., 284). Kansas *v.* Colorado (206 U. S., 46). Lee *v.* New Jersey (207 U. S., 67). Atlantic Coat Line R. R. Co. *v.* Wharton (207 U. S., 328). Old Dominion S. S. Co. *v.* Gilmore (207 U. S., 398). Howard *v.* Ill. C. R. R. Co. (207 U. S., 463). I. M. Darnell & Son Co. *v.* Memphis (208 U. S., 113). Adair *v.* U. S. (208 U. S., 161). Dick *v.* U. S.

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(208 U. S., 340). General Oil Co. *v.* Crain (209 U. S., 211). Asbell *v.* Kansas (209 U. S., 251). Hudson County Water Com. *v.* McCarter (209 U. S., 349). Ware & Leland *v.* Mobile Co. (209 U. S., 405). Mobile J. & K. C. R. R. Co. *v.* Miss. (210 U. S., 187). Galveston H. & S. A. R. R. Co. *v.* Texas (210 U. S., 217). New York ex rel. Silz *v.* Hesterberg (211 U. S., 31). United States *v.* Delaware & Hudson Co. (213 U. S., 366). District of Columbia *v.* Brooke (214 U. S., 138). Adams Express Co. *v.* Kentucky (214 U. S., 218). El Paso & Northeastern Ry. Co. *v.* Gutierrez (215 U. S., 87). Western Union Telegraph *v.* Kansas (216 U. S., 1). Pullman Co. *v.* Kansas (216 U. S., 56). Atlantic Coast Line Co. *v.* Mazursky (216 U. S., 122). Ludwig *v.* Western Union Telegraph Co. (216 U. S., 146). Monongahela Bridge Co. *v.* United States (216 U. S., 177). Missouri Pacific Ry. Co. *v.* Kansas (216 U. S., 262). International Textbook Co. *v.* Pigg (217 U. S., 91). St. Louis S. W. Ry. Co. *v.* Arkansas (217 U. S., 136). Standard Oil Co. *v.* Tennessee (217 U. S., 413). Southern Ry. Co. *v.* King (217 U. S., 524). Brown Forman Co. *v.* Kentucky (217 U. S., 563).

[4] To establish an uniform Rule of Naturalization,[1] and uniform Laws on the subject of Bankruptcies throughout the United States;[2]

[2] Sturges *v.* Crowninshield (4 Wh., 122). [2] McMillan *v.* McNeil (4 Wh., 209). [2] Farmers and Mechanics' Bank, Pennsylvania *v.* Smith (6 Wh., 131). [2] Ogden *v.* Saunders (12 Wh., 213). [2] Boyle *v.* Zacharie and Turner (6 Pet., 348). [1] Gassies *v.* Ballon (6 Pet., 761). [2] Beers et al. *v.* Haughton (9 Pet., 329). [2] Suydam et al. *v.* Broadnax (14 Pet., 67). [2] Cook *v.* Moffat et al. (5 How., 295). [1] Dred Scott *v.* Sandford (19 How., 393). [1] Nishimura Ekiu *v.* The United States (142 U. S., 651). [2] Hanover National Bank *v.* Moyses (186 U. S., 181). [1] Holmgren *v.* United States (217 U. S., 509).

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Briscoe *v.* The Bank of the Commonwealth of Kentucky (11 Pet., 257). Fox *v.* The State of Ohio (5 How., 410). United States *v.* Marigold (9 How., 560).

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Fox *v.* The State of Ohio (5 How., 410). | United States *v.* Marigold (9 How., 560).

[7] To establish Post Offices and post Roads;

State of Pennsylvania *v.* The Wheeling and Belmont Bridge Company (18 How., 421). Pensacola Telegraph Co. *v.* Western Union Telegraph Co. (96 U. S., 1). Ex parte Jackson (96 U. S., 727). In re Rapier (143 U. S., 110). Horner *v.* United States (143 U. S., 207). In re Debs, petitioner (158 U. S., 564). Illinois Central Railroad Co. *v.* Illinois (163 U. S., 142). Gladson *v.* Minnesota (166 U. S., 427). Public Clearing House *v.* Coyne (194 U. S., 497). Western Union Telegraph Co. *v.* Pennsylvania R. R. Co. (185 U. S., 540). Martin *v.* Pittsburg & Lake Erie R. R. Co. (203 U. S., 284). Mississippi R. R. Commission *v.* Ills. C. R. R. Co. (203 U. S., 335). Rearick *v.* Penn. (203 U. S., 507). N. Y. ex rel. Hatch *v.* Reardon, 204 (U. S., 152). Delamater *v.* So. Dak. (205 U. S., 93). Iroquois Co. *v.* De Laney Co. (205 U. S., 354). Adams Ex. Co. *v.* Ky. (206 U. S., 129–139). Battle *v.* U. S. (209 U. S., 36).

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Grant et al. *v.* Raymond (6 Pet., 218). Wheaton et al. *v.* Peters et al. (8 Pet., 591). Trade-mark Cases (100 U. S., 82). Burrow Giles Lithographic Co. *v.* Sarony (111 U. S., 53). United States *v.* Duell (172 U. S., 576). Allen *v.* Riley (203 U. S., 347). Martin *v.* Pittsburg & Lake Erie R. R. Co. (203 U. S., 284). Bobbs-Merrill Co. *v.* Straus (210 U. S., 339). Continental Paper Bag Co. *v.* Easton Paper Bag Co. (210 U. S., 405).

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

United States *v.* Palmer (3 Wh., 610). United States *v.* Wiltberger (5 Wh., 76). United States *v.* Smith (5 Wh., 153). United States *v.* Pirates (5 Wh., 184). United States *v.* Arizona (120 U. S., 479).

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Brown *v.* United States (8 Cr., 110). American Insurance Company et al. *v.* Canter (356 bales cotton) (1 Pet., 511). Mrs. Alexander's Cotton (2 Wall., 404). Miller *v.* United States (11 Wall., 268). Tyler *v.* Defrees (11 Wall., 331). Stew-

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art *v.* Kahn (11 Wall., 493). Hamilton *v.* Dillon (21 Wall., 73). Lamar, ex., *v.* Browne et al. (92 U. S., 187). Mayfield *v.* Richards (115 U. S., 137). The Chinese Exclusion Cases (130 U. S., 581). Mormon Church *v.* United States (136 U. S., 1). Nishimura Ekiu *v.* The United States (142 U. S., 651).

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Crandall *v.* State of Nevada (6 Wall., 35). Nishimura Ekiu *v.* The United States (142 U. S., 651).

[13] To provide and maintain a Navy;

United States *v.* Bevans (3 Wh., 336). Dynes *v.* Hoover (20 How., 65).

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Houston *v.* Moore (5 Wh., 1). Martin *v.* Mott (12 Wh., 19). Luther *v.* Borden (7 How., 1). Crandall *v.* State of Nevada (6 Wall., 35). Texas *v.* White (7 Wall., 700).

[16] To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Houston *v.* Moore (5 Wh., 1). Martin *v.* Mott (12 Wh., 19). Luther *v.* Borden (7 How., 1). Presser *v.* Illinois (116 U. S., 252).

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Hepburn et al. *v.* Ellzey (2 Cr., 444). Loughborough *v.* Blake (5 Wh., 317). Cohens *v.* Virginia (6 Wh., 264). American Insurance Company *v.* Canter (356 bales cotton), (1 Pet., 511). Kendall, Postmaster General, *v.* The United States (12 Pet., 524). United States *v.* Dewitt (9 Wall., 41). Dunphy *v.* Kleinsmith et al. (11 Wall., 610). Willard *v.* Presbury (14 Wall., 676). Kohl et al. *v.* United States (91 U. S., 367). Phillips *v.* Payne (92 U. S., 130). United States *v.* Fox (94 U. S., 315). National Bank *v.* Yankton County (101 U. S., 129). Fort Leavenworth R. R. Co. *v.* Lowe (114 U. S., 525). Gibbons *v.* District of Columbia (116 U. S., 404). Van Brocklin *v.* State of Tennessee (117 U. S., 151). Stoutenburgh *v.* Hennick (129 U. S., 141). Geofroy *v.* Riggs (133 U. S., 258). Benson *v.* United States (146 U. S., 325). Shoemaker *v.* United States (147 U. S., 282). Chappell *v.* United States (160 U. S., 499). Ohio *v.* Thomas (173 U. S., 276). Wight *v.* Davidson (181 U. S., 371). Battle *v.* United States (209 U. S., 36). Western Union Telegraph Co. *v.* Chiles (214 U. S., 274). El Paso & Northeastern Ry. Co. *v.* Gutierrez (215 U. S., 87).

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

McCulloch *v.* The State of Maryland (4 Wh., 316). Wayman *v.* Southard (10 Wh., 1). Bank of United States *v.* Halstead (10 Wh., 51). Hepburn *v.* Griswold (8 Wall., 603). National Bank *v.* Commonwealth (9 Wall., 353). Thomson *v.* Pacific Railroad (9 Wall., 579). Parker *v* Davis (12 Wall., 457). Railroad Company *v.* Johnson (15 Wall., 195). Railroad Company *v.* Peniston (18 Wall., 5). United States *v.* Fox (95 U. S., 670). United States *v.* Hall (98 U. S., 343). Tennessee *v.* Davis (100 U. S., 257). Ex parte Curtis (106 U. S., 371). Legal Tender Case (110 U. S., 421). In re Coy (127 U. S., 731). Stoutenburgh *v.* Hennick (129 U. S., 141.) Chinese Ex. Case (130 U. S., 581). Crenshaw *v.* United States (134 U. S., 99). In re Neagle (135 U. S., 1). Cherokee Nation *v.* Southern Kansas R. R. (135 U. S., 641). St. Paul, Minneapolis & Manitoba Ry. Co. *v.* Phelphs (137 U. S., 528). Nishimura Ekiu *v.* The United States (142 U. S., 651). Homer *v.*

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United States (143 U. S., 570). Field *v.* Clark (143 U. S., 649). Logan *v.* United States (144 U. S., 263). Fong-Yue Ting *v.* United States (149 U. S., 698). Lees *v.* United States (150 U. S., 476). Luxton *v.* North River Bridge Co. (153 U. S., 529). Erie R. Rd. *v.* Penna. (153 U. S., 628). Postal Tel. Cable Co. *v.* Charleston (153 U. S., 692). Interstate Com. Com. *v.* Brimson (154 U. S., 447). Clune *v.* United States (159 U. S., 590). In re Kollock (165 U. S., 526). Camfield *v.* United States (167 U. S., 518). Motes *v.* United States (178 U. S., 458). Buttfield *v.* Stranahan (192 U. S., 470). Felsenheld *v.* United States (186 U. S., 126). Kansas *v.* Colorado (206 U. S., 46).

Endleman *v.* U. S. (30 C. C. A., 186; 86 Fed. Rep., 456), urged the unconstitutionality of the act of Congress forbidding the sale of liquor in Alaska.

*Held*, in U. S. *v.* Binns (1 Alaska Rep., 553), that Congress has full legislative power over the Territories.

*Held*, In re C. E. Wynn-Johnson (1 Alaska Rep., 630), that the act for the collection of licenses is not unconstitutional.

*Held*, In re Burton (1 Alaska Rep., 111), that an Indian born in British Columbia will not be admitted to citizenship by naturalization. (See also In re Minook, 2 Alaska Rep., 200.)

SECTION 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Dred Scott *v.* Sanford (19 How., 393). | Oceanic Navigation Co. *v.* Stranahan (214 U. S., 320).

[2] The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States *v.* Hamilton (3 Dall., 17). Hepburn et al. *v.* Ellzey (2 Cr., 445). Ex parte Bollman and Swartwout (4 Cr., 75). Ex parte Kearney (7 Wh., 38). Ex parte Tobias Watkins (3 Pet., 192). Ex parte Milburn (9 Pet., 704). Holmes *v.* Jennison et al. (14 Pet., 540). Ex parte Dorr (3 How., 103). Luther *v.* Borden (7 How., 1). Ableman *v.* Booth and United States *v.* Booth (21 How., 506). Ex parte Vallandigham (1 Wall., 243). Ex parte Mulligan (4 Wall., 2). Ex parte McCardle (7 Wall., 506). Ex parte Yerger (8 Wall., 85). Tarble's Case (13 Wall., 397). Ex parte Lange (18 Wall., 163). Ex parte Parks (93 U. S., 18). Ex parte Karstendick (93 U. S., 396). Ex parte Virginia (100 U. S., 339). In re Neagle (135 U. S., 1). In re Duncan (139 U. S., 449). In re Frederick (149 U. S., 70). United States *v.* Sing Tuck (194 U. S., 161). United States *v.* Ju Toy (198 U. S., 253). Carfer *v.* Caldwell (200 U. S., 293). Fisher *v.* Baker (203 U. S., 174). McNichols *v.* Pease (207 U. S., 100). Armour Packing Co. *v.* United States (209 U. S., 56).

[3] No Bill of Attainder or ex post facto Law shall be passed.

Fletcher *v.* Peck (6 Cr., 87). Ogden *v.* Saunders (12 Wh., 213). Watson et al. *v.* Mercer (8 Pet., 88). Carpenter et al. *v.* Commonwealth of Pennsylvania (17 How., 456). Locke *v.* New Orleans (4 Wall., 172). Cummings *v.* The State of Missouri (4 Wall., 277). Ex parte Garland (4 Wall., 333). Drehman *v.* Stifle (8 Wall., 595). Klinger *v.* State of Missouri (13 Wall., 257). Pierce *v.* Carskadon (16 Wall., 234). Hopt *v.* Utah (110 U. S., 547). Holden *v.* Minnesota (137 U. S., 483). Cook *v.* United States (138 U. S., 157). Neely *v.* Henkel (No. 1), (180 U. S., 109). Southwestern Coal Co. *v.* McBride (185 U. S., 499). Delamater *v.* South Dakota (205 U. S., 93).

[4] No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

License Tax Cases (5 Wall., 462). Springer *v.* United States (102 U. S., 586). Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429). Nicol *v.* Ames (173 U. S., 509). Thomas *v.* United States (192 U. S., 363). Spreckles Sugar Refining Co. *v.* McClain (192 U. S., 397). South Carolina *v.* United States (199 U. S., 437).

[5] No Tax or Duty shall be laid on Articles exported from any State.

Cooley *v.* Board of Wardens of Port of Philadelphia (12 How., 299). Pace *v.* Burgess, collector (92 U. S., 372). Turpin *v.* Burgess (117 U. S., 504). Pittsburg & Southern Coal Co. *v.* Bates (156 U. S., 577). Nichols *v.* Ames (173 U. S., 509). Williams *v.* Fears (179 U. S., 270). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* United States (183 U. S., 151). Fourteen Diamond Rings *v.* United States (183 U. S., 176). Cornell *v.* Coyne (192 U. S., 418). South Carolina *v.* United States (199 U. S., 437). Armour Packing Co. *v.* United States (209 U. S., 56).

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[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Cooley *v.* Board of Wardens of Port of Philadelphia et al. (12 How., 299). State of Pennsylvania *v.* Wheeling and Belmont Bridge Company et al. (18 How., 421). Munn *v.* Illinois (94 U. S., 113). Packet Co. *v.* St. Louis (100 U. S., 423). Packet Co. *v.* Catlettsburg (105 U. S., 559). Spraigue *v.* Thompson (118 U. S., 90). Morgan *v.* Louisiana (118 U. S., 455). Johnson *v.* Chicago & Pacific Elevator Co. (119 U. S., 388). South Carolina *v.* United States (199 U. S., 437). Armour Packing Co. *v.* United States (209 U. S., 56).

[7] No Money shall be drawn from the Treasury, but in Consequence of appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit;[1] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,[2] or Law impairing the Obligation of Contracts,[3] or grant any Title of Nobility.

[2] Calder and Wife *v.* Bull and Wife (3 Dall., 386). [3] Fletcher *v.* Peck (6 Cr., 87). [3] State of New Jersey *v.* Wilson (7 Cr., 164). [3] Sturgis *v.* Crowninshield (4 Wh., 122). [3] McMillan *v.* McNeil (4 Wh., 209). [3] Dartmouth College *v.* Woodward (4 Wh., 518). [3] Owings *v.* Speed (5 Wh., 420). [3] Farmers and Mechanics' Bank *v.* Smith (6 Wh., 131). [3] Green et al. *v.* Biddle (8 Wh., 1). [3] Ogden *v.* Saunders (12 Wh., 213). [3] Mason *v.* Haile (12 Wh., 370). [3] Satterlee *v.* Matthewson (2 Pet., 380). [3] Hart *v.* Lamphire (3 Pet., 280). [1] Craig et al. *v.* State of Missouri (4 Pet., 410). [3] Providence Bank *v.* Billings and Pitman (4 Pet., 514). [1] Byrne *v.* State of Missouri (8 Pet., 40). [2] Watson *v.* Mercer (8 Pet., 88). [3] Mumma *v.* Potomac Company (8 Pet., 281). [3] Beers *v.* Haughton (9 Pet., 329). [1] Briscoe et al. *v.* The Bank of the Commonwealth of Kentucky (11 Pet., 257). [3] The Proprietors of Charles River Bridge *v.* The Proprietors of Warren Bridge (11 Pet., 420). [3] Armstrong *v.* The Treasurer of Athens Company (16 Pet., 281). [3] Bronson *v.* Kinzie et al. (1 How., 311). [3] McCracken *v.* Hayward (2 How., 608). [3] Gordon *v.* Appeal Tax Court (3 How., 133). [3] State of Maryland *v.* Baltimore and Ohio R. R. Co. (3 How., 534). [3] Neil, Moore & Co. *v.* State of Ohio (3 How., 720). [3] Cook *v.* Moffatt (5 How., 295). [3] Planters' Bank *v.* Sharp et al. (6 How., 301). [3] West River Bridge Company *v.* Dix et al. (6 How., 507). [3] Crawford et al. *v.* Branch Bank of Mobile (7 How., 279). [3] Woodruff *v.* Trapnall (10 How., 190). [3] Paup et al. *v.* Drew (10 How., 218). [2], [3] Baltimore and Susquehanna R. R. Co. *v.* Nesbitt et al. (10 How., 395). [3] Butler et al. *v.* Pennsylvania (10 How., 402). [1] Darrington et al. *v.* The Bank of Alabama (13 How., 12). [3] Richmond, etc., R. R. Co. *v.* The Louise R. R. Co. (13 How., 71). [3] Trustees for Vincennes University *v.* State of Indiana (14 How., 268). [3] Curran *v.* State of Arkansas et al. (15 How., 304). [3] State Bank of Ohio *v.* Knoop (16 How., 369). [2] Carpenter et al. *v.* Commonwealth of Pennsylvania (17 How., 456). [3] Dodge *v.* Woolsey (18 How., 331). [3] Beers *v.* State of Arkansas (20 How., 527). [3] Aspinwall et al. *v.* Commissioners of County of Daviess (22 How., 364). [3] Rector of Christ Church, Philadelphia, *v.* County of Philadelphia (24 How., 300). [3] Howard *v.* Bugbee (24 How., 461). [3] Jefferson Branch Bank *v.* Skelley (1 Black, 436). [3] Franklin Branch Bank *v.* State of Ohio (1 Black, 474). [3] Trustees of the Wabash and Erie Canal Company *v.* Beers (2 Black, 448). [3] Gilman *v.* City of Sheboygan (2 Black, 510). [3] Bridge Proprietors *v.* Hoboken Company (1 Wall., 116). [3] Hawthorne *v.* Calef (2 Wall., 10). [3] The Binghamton Bridge (3 Wall., 51). [3] The Turnpike Company *v.* The State (3 Wall., 210). [2] Locke *v.* City of New Orleans (4 Wall., 172). [3] Railroad Company *v.* Rock (4 Wall., 177). [3] Cummings *v.* State of Missouri (4 Wall., 277). [2] Ex parte Garland (4 Wall., 333). [3] Von Hoffman *v.* City of Quincy (4 Wall., 535). [3] Mulligan *v.* Corbin (7 Wall., 487). [3] Furman *v.* Nichol (8 Wall., 44). [3] Home of the Friendless *v.* Rouse (8 Wall., 430). [3] The Washington University *v.* Rouse (8 Wall., 439). [3] Butz *v.* City of Muscatine (8 Wall., 575). [3] Drehman *v.* Stifle, (8 Wall., 595). [3] Hepburn *v.* Griswold (8 Wall., 603). [2] Gut *v.* The State (9 Wall., 35). [3] Railroad Company *v.* McClure (10 Wall., 511). [3] Parker *v.* Davis (12 Wall.,

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457). [3] Curtis *v.* Whiting (13 Wall., 68). [3] Pennsylvania College Cases (13 Wall., 190). [3] Wilmington R. R. *v.* Reid, sheriff (13 Wall., 264). [3] Salt Company *v.* East Saginaw (13 Wall., 373). [3] White *v.* Hart (13 Wall., 646). [3] Osborn *v.* Nicholson et al. (13 Wall., 654). [3] Railroad Company *v.* Johnson (15 Wall., 195). [3] Case of the State Tax on Foreign-held Bonds (15 Wall., 300). [3] Tomlinson *v.* Jessup (15 Wall., 454). [3] Tomlinson *v.* Branch (15 Wall., 460). [3] Miller *v.* The State (15 Wall., 478). [3] Holyoke Company *v.* Lyman (15 Wall., 500). [3] Gunn *v.* Barry (15 Wall., 610). [3] Humphrey *v.* Pegues (16 Wall., 244). [3] Walker *v.* Whitehead (16 Wall., 314). [3] Sohn *v.* Waterson (17 Wall., 596). [3] Barings *v.* Dabney (19 Wall., 1). [3] Head *v.* The University (19 Wall., 526). [3] Pacific R. R. Co. *v.* Maguire (20 Wall., 36). [3] Garrison *v.* The City of New York (21 Wall., 196). [3] Ochiltree *v.* The Railroad Company (21 Wall., 249). [3] Wilmington, &c., Railroad *v.* King, ex., (91 U. S., 3). [3] County of Moultrie *v.* Rockingham Ten Cent Savings Bank (92 U. S., 631). [3] Home Insurance Company *v.* City Council of Augusta (93 U. S., 116). [3] West Wisconsin R. R. Co. *v.* Supervisors (93 U. S., 595); Murray *v.* Charleston (96 U. S., 432). Edwards *v.* Kearzey (96 U. S., 595). Keith *v.* Clark (97 U. S., 454). Railroad Co. *v.* Georgia (98 U. S. 359). Sinking Fund Cases (99 U. S., 700). Railroad Co. *v.* Tennessee (101 U. S., 337). Wright *v.* Nagle (101 U. S., 791). Stone *v.* Mississippi (101 U. S., 814). Railroad Co. *v.* Alabama (101 U. S., 832). Louisiana *v.* New Orleans (101 U. S., 203). Hall *v.* Wisconsin (103 U. S., 5). Pennyman's Case (103 U. S., 714). Guaranty Co. *v.* Board of Liquidation (105 U. S., 622). Greenwood *v.* Freight Co. (105 U. S., 13). Kring *v.* Missouri (107 U. S., 221). Louisiana *v.* New Orleans (109 U. S., 285). Gilfillan *v.* Union Canal Co. (109 U. S., 401). Nelson *v.* St. Martin's Parish (111 U. S., 716). Chic. Life Ins. Co. *v.* Needles (113 U. S., 574). Virginia Coupon Cases (114 U. S., 270). Allen, auditor, et al., *v.* B. & O. R. R. Co. (114 U. S., 311). Amy *v.* Shelby Co. (114 U. S., 387). Effinger *v.* Kenney (115 U. S., 566). N. Orleans Gas Co. *v.* La. Light Co. (115 U. S., 650). N. Orleans Water Works *v.* Rivers (115 U. S., 674). Louisville Gas Co. *v.* Citizens' Gas Co. (115 U. S., 683). Fisk *v.* Jefferson Police Jury (116 U. S., 131). Stone *v.* Farmers' Loan and Trust Co. (116 U. S., 307). Stone *v.* Ill. Central R. R. Co. (116 U. S., 347). Royall *v.* Virginia (116 U. S., 572). St. Tammany Water Works *v.* N. Orleans Water Works (120 U. S., 64). Church *v.* Kelsey (121 U. S., 282). Lehigh Water Co. *v.* Easton (121 U. S., 388). Seibert *v.* Lewis (122 U. S., 284). N. Orleans Water Works *v.* La. Sugar Ref. Co. (125 U. S., 18). Maynard *v.* Hill (125 U. S., 140). Jaehne *v.* N. Y. (128 U. S., 189). Denny *v.* Bennett (128 U. S., 489). Chinese Ex. Case (130 U. S., 588). Williamson *v.* N. J. (130 U. S., 189). Hunt *v.* Hunt (131 U. S., clxv). Freeland *v.* Williams (131 U. S., 405). Campbell *v.* Wade (134 U. S., 34). Penna. R. Rd. Co. *v.* Miller (134 U. S., 75). Hans *v.* Louisiana (134 U. S., 1). North Carolina *v.* Temple (134 U. S., 22). Crenshaw *v.* U. S. (134 U. S., 99). Louisiana ex rel. The N. Y. Guaranty and Indemnity Co. *v.* Steele (134 U. S., 280). Minneapolis Eastern Rwy. Co. *v.* Minnesota (134 U. S., 467). Hill *v.* Merchants' Ins. Co. (134 U. S., 515). Medley, petitioner (134 U. S., 160). Cherokee Nation *v.* Kansas Ry. Co. (135 U. S., 641). Virginia Coupon Cases (135 U. S., 662). Mormon Church *v.* U. S. (136 U. S., 1). Wheeler *v.* Jackson (137 U. S., 245). Holden *v.* Minnesota (137 U. S., 483). Sioux City Street Railway Co. *v.* Sioux City (138 U. S., 98). Cook *v.* U. S. (138 U. S., 157). Belmont Bridge Co. *v.* Wheeling Bridge Co. (138 U. S., 287). Cook County *v.* Calumet and Chicago Canal Co. (138 U. S., 635). Pennoyer *v.* McConnaughy (139 U. S., 1). Scotland County Court *v.* Hill (139 U. S., 41). Scott *v.* Neely (139 U. S., 106). Essex Public Road Board *v.* Shinkle (140 U. S., 334). Stein *v.* Bienville Water Supply Co. (141 U. S., 67). Henderson Bridge Co. *v.* Henderson (141 U. S., 679). New Orleans *v.* N. O. Water W'ks (142 U. S., 79). Pacific Ex. Co. *v.* Seibert (142 U. S., 339). N. O. City & Lake R. Rd. Co. *v.* New Orleans (143 U. S., 192). Winona & St. Peter R. Rd. Co. *v.* Plainview (143 U. S., 371). Louisville Water Co. *v.* Clark (143 U. S., 1). N. Y. *v.* Squire (145 U. S., 175). Brown *v.* Smart (145 U. S., 454). Baker's Exrs. *v.* Kilgore (145 U. S., 487). Morley *v.* Lake Shore & Mich. Southern Ry. Co. (146 U. S., 162). Hamilton, Ga., Ltd., Coke Co. *v.* Hamilton (146 U. S., 258). Wilmington & Weldon R. Rd. Co. *v.* Alsbrook (146 U. S., 279). Butley *v.* Gorley (146 U. S., 303). Ills. Cent. R. Rd. *v.* Ills. (146 U. S., 387). Morley *v.* Lake Shore & Mich. So. Rwy. Co. (146 U. S., 162). Hamilton Gas L't Co. *v.* Hamilton City (146 U. S., 258). Wil. & Wel. R. R. Co. *v.* Alsbrook (146 U. S., 279). Ill. Cent. R. Rd. Co. *v.* Illinois (146 U. S., 387). Bier *v.* McGehee (148 U. S., 137). Schurz *v.* Cook (148 U. S., 397). Eustis *v.* Bolles (150 U. S., 361). Duncan *v.* Missouri (152 U. S., 377). Israel *v.* Arthur (152 U. S., 355). New Orleans *v.* Benjamin (153 U. S., 411). Eagle Ins. Co. *v.* Ohio (153 U. S., 446). Erie R. Rd. *v.* Penna. (153 U. S., 628). Mobile & Ohio R. Rd. *v.* Tenn. (153 U. S., 486). Pittsburgh & So. Coal Co. *v.* La. (156 U. S., 590). U. S. ex rel. Siegel *v.* Thoman (156 U. S., 353). City and Lake R. Rd. *v.* N. O. (157 U. S., 219). Central Land Co. *v.* Laidley (159 U. S., 103). Winona & St. Peter Land Co. *v.* Minn. (159 U. S., 528). Bank of Commerce *v.* Tenn. (161 U. S., 134). Baltzer *v.* N. C. (161 U. S., 240). Pearsall *v.* Great Northern Ry. Co. (161 U. S., 646). Louisville, &c., R. R. Co. *v.* Kentucky (161 U. S., 677). Woodruff *v.* Miss. (162 U. S., 291). Gibson *v.* Miss. (162 U. S., 565). Barnitz *v.* Beverly (163 U. S., 118). Hanford *v.*

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Davies (163 U. S., 273). Covington, &c., Turnpike Co. *v.* Sanford (164 U. S., 578). St. Louis, &c., Ry. Co. *v.* Mathews (165 U. S., 1). Allgeyer *v.* Louisiana (165 U. S., 578). Grand Lodge *v.* New Orleans (166 U. S., 143). Long Island, &c., Co. *v.* Brooklyn (166 U. S., 685). Shapleigh *v.* San Angelo (167 U. S., 646). Water Power Co. *v.* Water Commissioners (168 U. S., 349). Douglas *v.* Kentucky (168 U. S., 488). Hawker *v.* New York (170 U. S., 189). Galveston, &c., Ry. Co. *v.* Texas (170 U. S., 226). Houston, &c., Ry. Co. *v.* Texas (170 U. S., 243). Williams *v.* Eggleston (170 U. S., 304). Thompson *v.* Utah (170 U. S., 343). Chicago, &c., R. R. Co. *v.* Nebraska (170 U. S., 57). Laclede Gas Light Co. *v.* Murphy (170 U. S., 78). Louisville Water Co. *v.* Kentucky (170 U. S., 127). Thompson *v.* Missouri (171 U. S., 380). Walla Walla *v.* Walla Walla Water Co. (172 U. S., 1). McCullough *v.* Va. (172 U. S., 102). Covington *v.* Kentucky (173 U. S., 231). Citizens Savings Bank *v.* Owensboro (173 U. S., 636). Henderson Bridge Co. *v.* Henderson City (173 U. S., 592). Adirondack Ry. *v.* New York (176 U. S., 335). Walsh *v.* Columbus, &c., R. R. Co. (176 U. S., 469). Looker *v.* Maynard (179 U. S., 46). Stearns *v.* Minn. (179 U. S., 223). McDonald *v.* Massachusetts (180 U. S., 311). St. Paul Gas Light Co. *v.* St. Paul (181 U. S., 142). Bedford *v.* Eastern, &c., Association (181 U. S., 227). Red River Valley Bank *v.* Craig (181 U. S., 548). Mallett *v.* North Carolina (181 U. S., 589). Knoxville Iron Co. *v.* Harbison (183 U. S., 13). Orr *v.* Gilman (183 U. S., 278). Louisville, &c., R. R. Co. *v.* Kentucky (183 U. S., 503). Wilson *v.* Iseminger (185 U. S., 55). Vicksburg Waterworks Co. *v.* Vicksburg (185 U. S., 65). Northern Central Ry. Co. *v.* Maryland (187 U. S., 258). Oshkosh Waterworks Co. *v.* Oshkosh (187 U. S., 437). Transportation Co. *v.* Mobile (187 U. S., 479). Diamond Glue Co. *v.* U. S. Glue Co. (187 U. S., 611). Weber *v.* Rogan (188 U. S., 10). Blackstone *v.* Miller (188 U. S., 189). Reetz *v.* Michigan (188 U. S., 505). Waggoner *v.* Flack (188 U. S., 595). Zane *v.* Hamilton County (189 U. S., 370). Knoxville Water Co. *v.* Knoxville (189 U. S., 434). Joplin *v.* Light Co. (191 U. S., 150). Owensboro *v.* Owensboro Waterworks Co. (191 U. S., 358). Wisconsin & Michigan Ry. Co. *v.* Powers (191 U. S., 379). Deposit Bank *v.* Frankfort (191 U. S., 499). Citizens Bank *v.* Parker (192 U. S., 73). Stanislaus County *v.* San Joaquin C. & I. Co. (192 U. S., 201). Grand Rapids & Indiana Ry. Co. *v.* Osborn (193 U. S., 17). Underground Railroad *v.* City of New York (193 U. S., 416). Newburyport Water Co. *v.* Newburyport (193 U. S., 561). National Mutual B. & L. Assn. *v.* Brahan (193 U. S., 635). Wright *v.* Minn. Mutual Life Ins. Co. (193 U. S., 657). Peoples Gas Light & Coke Co. *v.* Chicago (194 U. S., 1). Pacific Electric Ry. Co. *v.* Los Angeles (194 U. S., 112). Hooker *v.* Burr (194 U. S., 415). Cleveland *v.* Cleveland City Ry. Co. (194 U. S., 517). Bradley *v.* Lightcap (195 U. S., 1). Helena, &c., Co. *v.* Helena (195 U. S., 383). Rooney *v.* North Dakota (196 U. S., 319). Worcester *v.* Street Ry. Co. (196 U. S., 539). Dawson *v.* Columbia Trust Co. (197 U. S., 178). Savannah, &c., Ry. *v.* Savannah (198 U. S., 392). Knights of Pythias *v.* Meyer (198 U. S., 508). Metropolitan Street Ry. Co. *v.* New York (199 U. S., 1). Brooklyn City R. R. Co. *v.* New York (199 U. S., 48). Kies *v.* Lowrey (199 U. S., 233). Tampa Water Works *v.* Tampa (199 U. S., 241). Graham *v.* Folsom (200 U. S., 248). West Chicago R. R. *v.* Chicago (201 U. S., 506). Cleveland *v.* Cleveland Electric Ry. (201 U. S., 529). Powers *v.* Detroit, &c., Ry. (201 U. S., 543). Devine *v.* Los Angeles (202 U. S., 313). Vicksburg *v.* Waterworks Co. (202 U. S., 453). National Council *v.* State Council (203 U. S., 151). Mercantile Trust Co. *v.* Columbus (203 U. S., 311). Offield *v.* N. Y., N. H. & H. R. R. (203 U. S., 372). Fair Haven R. R. *v.* New Haven (203 U. S., 379). American Smelting Co. *v.* Colorado (204 U. S., 103). Cleveland R. R. Co. *v.* Cleveland (204 U. S., 116). Rochester R. R. Co. *v.* Rochester (205 U. S., 236). Chanler *v.* Kelsey (205 U. S., 466). Smith *v.* Jennings (206 U. S., 276). Vicksburg *v.* Vicksburg Water Works Co. (206 U. S., 496). Bernheimer *v.* Converse (206 U. S., 516). Sauer *v.* New York (206 U. S., 536). Hunter *v.* Pittsburg (207 U. S., 161). Polk *v.* Mutual Reserve Assn. (207 U. S., 310). Bank of Kentucky *v.* Kentucky (207 U. S., 258). Water, Light & Gas Co. *v.* Hutchinson (207 U. S., 385). Sullivan *v.* Texas (207 U. S., 416). Braxton County Court *v.* West Virginia ex rel. Dillon (208 U. S., 192). Cosmopolitan Club *v.* Virginia (208 U. S., 378). Jetton *v.* University of the South (208 U. S., 489). Northern Pacific R. R. Co. *v.* Minnesota ex rel. Duluth (208 U. S., 583). Hudson County Water Co. *v.* McCarter (209 U. S., 349). Yazoo & Miss. R. R. Co. *v.* Vicksburg (209 U. S., 358). Mobile, J. & K. C. R. R. Co. *v.* Mississippi (210 U. S., 187). St. Louis *v.* United Railways Co. (210 U. S., 266). Berea College *v.* Kentucky (211 U. S., 45). Home Telephone Co. *v.* Los Angeles (211 U. S., 265). McLean *v.* Arkansas (211 U. S., 539). Hammond Packing Co. *v.* Arkansas (212 U. S., 322). Des Moines *v.* City Ry. Co. (214 U. S., 179). St. Paul, Minn. & Manitoba Ry. Co. *v.* Minnesota (214 U. S., 497). Hubert *v.* New Orleans (215 U. S., 170). Scott County Road Co. *v.* Hines (215 U. S., 336). Henley *v.* Myers (215 U. S., 373). Minneapolis *v.* Street Ry. Co. (215 U. S., 417). Great Northern Ry. Co. *v.* Minnesota (216 U. S., 206). Great Western Ry. Co. *v.* Minnesota (216 U. S., 234). Missouri Pacific Ry. Co. *v.* Kansas (216 U. S., 262). Wright *v.* Georgia R. R. & Banking Co. (216 U. S., 420). Frellsen & Co. *v.* Crandell (217 U. S., 71).

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be

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absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

McCulloch *v.* State of Maryland (4 Wh., 316). Gibbons *v.* Ogden (9 Wh., 1). Brown *v.* The State of Maryland (12 Wh., 419). Mager *v.* Grima et al. (8 How., 490). Cooley *v.* Board of Wardens of Port of Philadelphia et al. (12 How., 299). Almy *v.* State of California (24 How., 169). License Tax Cases (5 Wall., 462). Crandall *v.* State of Nevada (6 Wall., 35). Waring *v.* The Mayor (8 Wall., 110). Woodruff *v.* Perham (8 Wall., 123). Hinson *v.* Lott (8 Wall., 148). State Tonnage Tax Cases (12 Wall., 204). State Tax on Railway Gross Receipts (15 Wall., 284). Inman Steamship Company *v.* Tinker (94 U. S., 238). Cook *v.* Pennsylvania (97 U. S., 566). Packet Co. *v.* Keokuk (95 U. S., 80). Turner *v.* Maryland (107 U. S., 38). People *v.* Compagnie Générale Transatlantique (107 U. S., 59). Brown *v.* Houston (114 U. S., 622). Coe *v.* Errol (116 U. S., 517). Turpin *v.* Burgess (117 U. S., 504). Pittsburgh & So. Coal Co. *v.* Bates (156 U. S., 577). Pittsburgh & So. Coal Co. *v.* La. (156 U. S., 590). Scott *v.* Donald (165 U. S., 58). Patapsco Guano Co. *v.* N. C. (171 U. S., 345). May & Co. *v.* New Orleans (178 U. S., 496). Dooley *v.* United States (183 U. S., 151). Cornell *v.* Coyne (192 U. S., 418). American Steel & Wire Co. *v.* Speed (192 U. S., 500). D., L. & W. R. R. Co. *v.* Pennsylvania (198 U. S., 341). New Mexico ex rel. McLean *v.* Denver & R. G. R. R. Co. (203 U. S., 38). New York ex rel. Burke *v.* Wells (208 U. S., 14). Selliger *v.* Kentucky (213 U. S., 200).

[3] No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Green *v.* Biddle (8 Wh., 1). Poole et al. *v.* The Lessee of Fleeger et al. (11 Pet., 185). Cooley *v.* Board of Wardens of Port of Philadelphia et al. (12 How., 299). Peete *v.* Morgan (19 Wall., 581). Cannon *v.* New Orleans (20 Wall., 577). Inman Steam-ship Company *v.* Tinker (94 U. S., 238). Packet Co. *v.* Keokuk (95 U. S., 80). Transportation Co. *v.* Wheeling (99 U. S., 273). Packet Co. *v.* St. Louis (100 U. S., 423). Vicksburg *v.* Tobin (100 U. S., 430). Packet Co. *v.* Catlettsburg (105 U. S., 559). Wiggins Ferry Co. *v.* East St. Louis (107 U. S., 365). Transportation Company *v.* Parkersburg (107 U. S., 691). Presser *v.* Illinois (116 U. S., 252). Morgan *v.* Louisiana (118 U. S., 455). Huse *v.* Glover (119 U. S., 543). Ouachita Packet Co. *v.* Aiken (121 U. S., 444). Indiana *v.* Kentucky (136 U. S., 479). Harmon *v.* Chicago (147 U. S., 396). Va. *v.* Tenn. (148 U. S., 503). Wharton *v.* Wise (153 U. S., 155). St. Louis, &c., Ry. Co. *v.* James (161 U. S., 545).

## Article II.

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows

[2] Each State shall appoint, in such manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Chisholm, ex., *v.* Georgia (2 Dall., 419). Leitensdorfer et al. *v.* Webb (20 How., 176). Ex parte Siebold (100 U. S., 271). In re Green (134 U. S., 377). McPherson *v.* Blacker (146 U. S., 1).

* [The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President

* This clause has been superseded by the twelfth amendment, p. 223.



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of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice-President.]

[3] The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

English *v.* The Trustees of the Sailors' Snug Harbor (3 Pet., 99).

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429).

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

In re Neagle (135 U. S., 1).

SECTION 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

United States *v.* Wilson (7 Pet., 150). Ex parte William Wells (18 How., 307). Ex parte Garland (4 Wall., 333). Armstrong's Foundry (6 Wall., 766). The Grape Shot (9 Wall., 129). United States *v.* Padelford (9 Wall., 542). United States *v.* Klein (13 Wall., 128). Armstrong *v.* The United States (13 Wall.,

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152). Pargoud *v.* The United States (13 Wall., 156). Hamilton *v.* Dillin (21 Wall., 73). Mechanics and Traders' Bank *v.* Union Bank (22 Wall., 276). Lamar ex., *v.* Browne et al. (92 U. S., 187). Wallach et al. *v.* Van Riswick (92 U. S., 202). Eustis *v.* Bolles (150 U. S., 361).

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Ware *v.* Hylton et al. (3 Dall., 199). Marbury *v.* Madison (1 Cr., 137). United States *v.* Kirkpatrick (9 Wh., 720). American Insurance Company *v.* Canter (356 bales cotton) (1 Pet., 511). Foster and Elam *v.* Neilson (2 Pet., 253). Cherokee Nation *v.* State of Georgia (5 Pet., 1). Patterson *v.* Gwinn et al. (5 Pet., 233). Worcester *v.* State of Georgia (6 Pet., 515). City of New Orleans *v.* De Armas et al. (9 Pet., 224). Holden *v.* Joy (17 Wall., 211). United States *v.* Germaine (99 U. S., 508). United States *v.* Corson (114 U. S., 619). United States *v.* Perkins (116 U. S., 483). United States *v.* Rauscher (119 U. S., 407). Geofroy *v.* Riggs (133 U. S., 258). Mormon Church *v.* United States (136 U. S., 1). Horner *v.* United States (143 U. S., 570). Field *v.* Clark (143 U. S., 649). Shoemaker *v.* United States (147 U. S., 282). Parsons *v.* United States (167 U. S., 324). Rice *v.* Ames (180 U. S., 371). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* United States (182 U. S., 222). Downes *v.* Bidwell (182 U. S., 244). Fourteen Diamond Rings *v.* United States (183 U. S., 176). Dorr *v.* United States (195 U. S., 138). Dick *v.* United States (208 U. S., 340).

In re Minook (2 Alaska Rep., 200). does not hold that the treaty-making body has the power to naturalize by stipulation or incorporate an alien people in the citizenry of the United States without the consent of Congress.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

The United States *v.* Kirkpatrick et al. (9 Wh., 720).

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Marbury *v.* Madison (1 Cr., 137). Kendall, Postmaster-General *v.* The United States (12 Pet., 524). Luther *v.* Borden (7 How., 1). The State of Mississippi *v.* Johnson, President (4 Wall., 475). Stewart *v.* Kahn (11 Wall., 493). In re Neagle (135 U. S., 1).

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Langford *v.* United States (101 U. S., 341).

## ARTICLE III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Com-

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pensation which shall not be diminished during their Continuance in Office.

Chisholm, ex., *v.* Georgia (2 Dall., 419). Stuart *v.* Laird (1 Cr., 299). United States *v.* Peters (5 Cr., 115). Cohens *v.* Virginia (6 Cr., 264). Martin *v.* Hunter's Lessee (1 Wh., 304). Osborn *v.* United States Bank (9 Wh., 738). Benner et al. *v.* Porter (9 How., 235). The United States *v.* Ritchie (17 How., 525). Murray's Lessee et al. *v.* Hoboken Land and Improvement Company (18 How., 272). Ex parte Vallandigham (1 Wall., 243). Pennoyer *v.* Neff (95 U. S., 714). United States *v.* Union Pacific Railroad Co. (98 U. S., 569). Mitchell *v.* Clark (110 U. S., 633). Ames *v.* Kansas (111 U. S., 449). In re Loney (134 U. S., 373). In re Green (134 U. S., 377). In re Ross (140 U. S., 453). McAllister *v.* United States (141 U. S., 174). Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429). Robertson *v.* Baldwin (165 U. S., 275). Downes *v.* Bidwell (182 U. S., 244). Hanover National Bank *v.* Moyses (186 U. S., 181). Turner *v.* Williams (194 U. S., 279). Ex parte Wisner (203 U. S., 449). Kansas *v.* Colorado (206 U. S., 46).

SECTION 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Hayburn's case (note) (2 Dall., 410). Chisholm, ex., *v.* Georgia (2 Dall., 419). Glass et al. *v.* Sloop Betsey (3 Dall., 6). United States *v.* La Vengeance (3 Dall., 297). Hollingsworth et al. *v.* Virginia (3 Dall., 378). Mossman, ex., *v.* Higginson (4 Dall., 12). Marbury *v.* Madison (1 Cr., 137). Hepburn et al. *v.* Ellzey (2 Cr., 444). United States *v.* Moore (3 Cr., 159). Strawbridge et al *v.* Curtiss et al. (3 Cr., 267). Ex parte Bollman and Swartwout (4 Cr., 75). Rose *v.* Himely (4 Cr., 241). Chappedelaine et al. *v.* Dechenaux (4 Cr., 305). Hope Insurance Company *v.* Boardman et al. (5 Cr., 57). Bank of United States *v.* Devaux et al. (5 Cr., 61). Hodgson et al. *v.* Bowerbank et al. (5 Cr., 303). Owings *v.* Norwood's Lessee (5 Cr., 344). Durousseau *v.* The United States (6 Cr., 307). United States *v.* Hudson and Goodwin (7 Cr., 32). Martin *v.* Hunter (1 Wh., 304). Colson et al. *v.* Lewis (2 Wh., 377). United States *v.* Bevans (3 Wh., 336). Cohens *v.* Virginia (6 Wh., 264). Ex parte Kearney (7 Wh., 38). Matthews *v.* Zane (7 Wh., 164). Osborn *v.* United States Bank (9 Wh., 738). United States *v.* Ortega (11 Wh., 467). American Insurance Company *v.* Canter (356 bales cotton, (1 Pet., 511). Jackson *v.* Twentyman (2 Pet., 136). Cherokee Nation *v.* State of Georgia (5 Pet., 1). State of New Jersey *v.* State of New York (5 Pet., 283). Davis *v.* Packard et al. (6 Pet., 41). United States *v.* Arredondo et al. (6 Pet., 691). Davis *v.* Packard et al. (7 Pet., 276). Breedlove et al. *v.* Nickolet et al. (7 Pet., 413). Brown *v.* Keene (8 Pet., 112). Davis *v.* Packard et al. (8 Pet., 312). City of New Orleans *v.* De Armas et al. (9 Pet., 224). The State of Rhode Island *v.* The Commonwealth of Massachusetts (12 Pet., 657). The Bank of Augusta *v.* Earle (13 Pet., 519). The Commercial and Railroad Bank of Vicksburg *v.* Slocomb et al. (14 Pet., 60). Suydam et al. *v.* Broadnax (14 Pet., 67). Prigg *v.* The Commonwealth of Pennsylvania (16 Pet., 530). Louisville, Cincinnati and Charleston Railway Company *v.* Letson (2 How., 497). Cary et al. *v.* Curtis (3 How., 235). Warring *v.* Clark (5 How., 441). Luther *v.* Borden (7 How., 1). Sheldon et al. *v.* Sill (8 How., 441). The Propeller Genesee Chief *v.* Fitzhugh et al. (12 How., 443). Fretz et al. *v.* Ball et al. (12 How., 466). Neves et al. *v.* Scott et al (13 How., 268). State of Pennsylvania *v.* The Wheeling, etc., Bridge Company et al. (13 How., 518). Marshall *v.* The Baltimore and Ohio R. R. Co. (16 How., 314). The United States *v.* Guthrie (17 How., 284). Smith *v.* State of Maryland (18 How., 71). Jones et al. *v.* League (18 How., 76). Murray's Lessee et al. *v.* Hoboken Land and Improvement Company (18 How., 272). Hyde et al. *v.* Stone (20 How., 170). Irvine *v.* Marshall et al. (20 How., 558). Fenn *v.* Holmes (21 How., 481). Moorewood et al. *v.* Erequist (23 How., 491). Commonwealth of Kentucky *v.* Dennison, governor (24 How., 66). Ohio and Mississippi Railroad Company *v.* Wheeler (1 Black, 286). The Steamer Saint Lawrence (1 Black, 522). The Propeller Commerce (1 Black, 574). Ex parte Vallandigham (1 Wall., 243). Ex parte Milligan (4 Wall., 1). The Moses Taylor (4 Wall., 411). State of Mississippi *v.* Johnson, President (4 Wall., 475). The Hine *v.* Trevor (4 Wall., 555). City of Philadelphia *v.* The Collector (5 Wall., 720). State of Georgia *v.* Stanton (6 Wall., 50). Payne *v.* Hook (7 Wall., 425). The Alicia (7 Wall., 571). Ex parte Yerger (8 Wall., 85). Insurance Company *v.* Dunham (11 Wall., 1). Virginia *v.* West Virginia (11

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Wall., 39). Coal Company *v.* Blatchford 11 Wall., 172). Railway Company *v.* Whitton's Adm. (13 Wall., 270). Tarble's Case (13 Wall., 397). Blyew et al. *v.* The United States (13 Wall., 581). Davis *v.* Gray (16 Wall., 203). Case of the Sewing Machine Companies (18 Wall., 353). Insurance Company *v.* Morse (20 Wall., 445). Vannevar *v.* Bryant (21 Wall., 41). The Lottawanna (21 Wall., 558). Gaines *v.* Fuentes et al. (92 U. S., 10). Miller *v.* Dows (94 U. S., 444). Doyle *v.* Continental Insurance Company (94 U. S., 535). Tennessee *v.* Davis (100 U. S., 257). Baldwin *v.* Franks (120 U. S., 678). Barron *v.* Burnside (121 U. S., 186). St. Louis, Iron Mountain and Southern Railway *v.* Vickers (122 U. S., 360). Chinese Ex. Case (130 U. S., 581). Brooks *v.* Missouri (124 U. S., 394). New Orleans Water Works *v.* Louisiana Sugar Refining Co. (125 U. S., 18). Spencer *v.* Merchant (125 U. S., 345). Dale Tile Mfg. Co. *v.* Hyatt (125 U. S., 46). Felix *v.* Scharnweber (125 U. S., 54). Hannibal and St. Joseph R. R. *v.* Missouri River Packet Co. (125 U. S., 260). Kreiger *v.* Shelby R. R. Co. (125 U. S., 39). Craig *v.* Leitensdorfer (127 U. S., 764). Jones *v.* Craig (127 U. S., 213). Wisconsin *v.* Pelican Ins. Co. (127 U. S., 265). U. S. *v.* Beebe (127 U. S., 338). Chinese Ex. Case (130 U. S., 581). Lincoln County *v.* Luning (133 U. S., 529). Christian *v.* Atlantic & N. C. R. Rd. Co. (133 U. S., 233). Haus *v.* Louisiana (134 U. S., 1). Louisiana ex rel. The N. Y. Guaranty & Indemnity Co. *v.* Steele (134 U. S., 280). Jones *v.* U. S., (137 U. S., 202). Manchester *v.* Mass. (139 U. S., 240). In re Ross (140 U. S., 453). In re Garnett (141 U. S., 1). U. S. *v.* Texas (143 U. S., 621). Cooke *v.* Avery (147 U. S., 375). S. Pac. Co. *v.* Denton (146 U. S., 202). Lawton *v.* Steele (152 U. S., 133). Interstate Com. Comsn. *v.* Brinson (154 U. S., 447). St. Louis, etc., Ry. Co. *v.* James (161 U. S., 545). Hanford *v.* Davies (163 U. S., 273). Fallbrook Irrigation District *v.* Bradley (164 U. S., 112). In re Lennon (166 U. S., 548). Meyer *v.* Richmond (172 U. S., 82). La Abra Silver Mining Co. *v.* U. S. (175 U. S., 423). Louisiana *v.* Texas (176 U. S., 1). Western Union Telegraph Co. *v.* Ann Arbor R. R. Co. (178 U. S., 239). Smith *v.* Reeves (178 U. S., 436). Motes *v.* U. S. (178 U. S., 458). Wiley *v.* Sinkler (179 U. S., 58). Missouri *v.* Illinois (180 U. S., 208). Eastern Building Association *v.* Welling (181 U. S., 47). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* U. S. (182 U. S., 222). Downes *v.* Bidwell (182 U. S., 244). Fourteen Diamond Rings *v.* U. S. (183 U. S., 176). Tullock *v.* Mulvane (184 U. S., 497). Patton *v.* Brady (184 U. S., 608). Vicksburg Waterworks Co. *v.* Vicksburg (185 U. S., 65). Kansas *v.* Colorado (185 U. S., 125). Swafford *v.* Templeton (185 U. S., 487). Mobile Transportation Co. *v.* Mobile (187 U. S., 479). Andrews *v.* Andrews (188 U. S., 14). Hooker *v.* Los Angeles (188 U. S., 314). Cummings *v.* Chicago (188 U. S., 410). United States *v.* Lynah (188 U. S., 445). Schaefer *v.* Werling (188 U. S., 516). Northern Pacific Ry. Co. *v.* Soderberg (188 U. S., 526). Hennessy *v.* Richardson Drug Co. (189 U. S., 25). The Roanoke (189 U. S., 185). Detroit, &c., Ry. *v.* Osborn (189 U. S., 383). Giles *v.* Harris (189 U. S., 475). Patterson *v.* Bark Eudora (190 U. S., 169). Continental National Bank *v.* Buford (191 U. S., 119). Howard *v.* Fleming (191 U. S., 126). Defiance Water Co. *v.* Defiance (191 U. S., 184). Arbuckle *v.* Blackburn (191 U. S., 405). Deposit Bank *v.* Frankfort (191 U. S., 499). Spencer *v.* Duplan Silk Co. (191 U. S., 526). Wabash R. R. Co. *v.* Pearce (192 U. S., 179). Rogers *v.* Alabama (192 U. S., 226). South Dakota *v.* North Carolina (192 U. S., 286). Bankers' Casualty Co. *v.* Minn., St. P., &c., Ry. (192 U. S., 371). Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397). Underground Railroad *v.* City of New York (193 U. S., 416). Minnesota *v.* Northern Securities Co. (194 U. S., 48). Pacific Electric Ry. Co. *v.* Los Angeles (194 U. S., 112). Hooker *v.* Burr (194 U. S., 415). Cleveland *v.* Cleveland City Ry. Co. (194 U. S., 517). Stevenson *v.* Fain (195 U. S., 165). Madisonville Traction Co. *v.* St. Bernard Mining Co. (196 U. S., 239). Jacobson *v.* Massachusetts (197 U. S., 11). Dawson *v.* Columbia Trust Co. (197 U. S., 178). Leonard *v.* Vicksburg, &c., R. R. Co. (198 U. S., 416). Farrell *v.* O'Brien (199 U. S., 89). South Carolina *v.* United States (199 U. S. 437). Water Co. *v.* Knoxville (200 U. S., 22). Carfer *v.* Caldwell (200 U. S., 293). Security Mutual Life Ins. Co. *v.* Prewitt (202 U. S., 246). Ex parte Wisner (203 U. S., 449). Kansas *v.* United States (204 U. S., 331). The Winnebago (205 U. S., 354). Sauer *v.* New York (206 U. S., 536). Lee *v.* New Jersey (207 U. S., 67). Old Dominion S. S. Co. *v.* Gilmore (207 U. S., 398). In re Moore (209 U. S., 490). St. L., I. M. & S. R. R. Co. *v.* Taylor (210 U. S., 281). Berea College *v.* Kentucky (211 U. S., 45). North American Cold Storage Co. *v.* Chicago (211 U. S., 306). Wilcox *v.* Consolidated Gas Co. (212 U. S., 19). Bonner *v.* Gorman (212 U. S., 86). Waters-Pierce Oil Co. *v.* Texas (212 U. S., 112). American Express Co. *v.* Mullins (212 U. S., 311). Atchison, Topeka & Santa Fe Ry. *v.* Sowers (213 U. S., 55). Smithsonian Institution *v.* St. John (214 U. S., 19). Goodrich *v.* Ferris (214 U. S., 71). Adams Express Co. *v.* Kentucky (214 U. S., 218). Western Union Telegraph Co. *v.* Chiles (214 U. S., 274). Oceanic Steam Navigation Co. *v.* Stranahan (214 U. S., 320). El Paso & Northeastern Ry. Co. *v.* Gutierrez (215 U. S., 87). Weems *v.* United States (217 U. S., 349).

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both

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as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Chisholm, ex., *v.* Georgia (2 Dall., 419). Wiscart et al. *v.* Dauchy (3 Dall., 321). Marbury *v.* Madison (1 Cr., 137). Durousseau et al. *v.* United States (6 Cr., 307). Martin *v.* Hunter's Lessee (1 Wh., 304). Cohens *v.* Virginia (6 Wh., 234). Ex parte Kearney (7 Wh., 38). Wayman *v.* Southard (10 Wh., 1). Bank of the United States *v.* Halstead (10 Wh., 51). United States *v.* Ortega (11 Wh., 467). The Cherokee Nation *v.* The State of Georgia (5 Pet., 1). Ex parte Crane et al. (5 Pet., 189). The State of New Jersey *v.* the State of New York (5 Pet., 283). Ex parte Sibbald *v.* United States (12 Pet., 488). The State of Rhode Island *v.* The State of Massachusetts (12 Pet., 657). State of Pennsylvania *v.* The Wheeling, &c., Bridge Company (13 How., 518). In re Kaine (14 How., 103). Ableman *v.* Booth and United States *v.* Booth (21 How., 506). Freeborn *v.* Smith (2 Wall., 160). Ex parte McCardle (6 Wall., 318). Ex parte McCardle (7 Wall., 506). Ex parte Yerger (8 Wall., 85). The Lucy (8 Wall., 307). The Justices *v.* Murray (9 Wall., 274). Pennsylvania *v.* Quicksilver Company (10 Wall., 553). Murdock *v.* City of Memphis (20 Wall., 590). The "Francis Wright," (105 U. S., 381). Börs *v.* Preston (111 U. S., 252). Ames *v.* Kansas (111 U. S., 449). Craig *v.* Leitensdorfer (127 U. S., 764). Wisconsin *v.* Pelican Ins. Co. (127 U. S., 265). Clough *v.* Curtis (134 U. S., 361). In re Neagle (135 U. S., 1). U. S. *v.* Texas (143 U. S., 621). Mobile & Ohio R. Rd. *v.* Tenn. (153 U. S., 486). Woodruff *v.* Miss. (162 U. S., 291). McCullough *v.* Va. (172 U. S., 102). Louisiana *v.* Texas (176 U. S., 1). Missouri *v.* Illinois & Chicago Dist., (180 U. S., 208). W. W. Cargill Co. *v.* Minnesota, 180 U. S., 452). Wilkes County *v.* Coler (180 U. S., 506). Mallett *v.* North Carolina (181 U. S., 589). Kansas *v.* Colorado (185 U. S., 125). Minnesota *v.* Hitchcock, 185 U. S., 373). United States *v.* Bitty (208 U. S., 393).

[3] The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Ex parte Milligan (4 Wall., 2). Barton *v.* Barbour (104 U. S., 126). Ex parte Wall., (107 U. S., 265). Callan *v.* Wilson (127 U. S., 540). Nashville, Chattanooga, etc., Railway *v.* Alabama (128 U. S., 96). Eilenbecker *v.* Plymouth County (134 U. S., 31.) Jones *v.* United States (137 U. S., 202). Cook *v.* United States, 138 U. S., 157). In re Ross (140 U. S., 453). Fong Yu Ting *v.* United States (149 U. S., 698). In re Debs, petitioner (158 U. S., 564). Thompson *v.* Utah (170 U. S., 343). Schick *v.* United States (195 U. S., 65). Dorr *v.* United States (195 U. S., 138). Matter of Strauss (197 U. S., 324). Marvin *v.* Trout (199 U. S., 212). Martin *v.* Texas (200 U. S., 316). Tinsley *v.* Treat (205 U. S., 20). Armour Packing Co. *v.* United States (209 U. S., 56). Hass *v.* Henkel (216 U. S., 462).

SECTION 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

United States *v.* The Insurgents (2 Dall., 335). United States *v.* Mitchell (2 Dall., 348). Ex parte Bollman and Swartwout (4 Cr., 75). United States *v.* Aaron Burr (4 Cr., 469).

[2] The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Bigelow *v.* Forest (9 Wall., 339). Day *v.* Micou (18 Wall., 156). Ex parte Lange (18 Wall., 163). Wallach et al. *v.* Van Riswick (92 U. S., 202).

## ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

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Mills *v.* Duryee (7 Cr., 481). Hampton *v.* McConnel (3 Wh., 234). Mayhew *v.* Thatcher (6 Wh., 129). Darby's Lessee *v.* Mayer (10 Wh., 465). The United States *v.* Amedy (11 Wh., 392). Caldwell et al. *v.* Carrington's Heirs (9 Pet., 86). M'Elmoyle *v.* Cohen (13 Pet., 312). The Bank of Augusta *v.* Earle (13 Pet., 519). Bank of the State of Alabama *v.* Dalton (9 How., 522). D'Arcy *v.* Ketchum (11 How., 165). Christmas *v.* Russell (5 Wall., 290). Green *v.* Van Buskirk (7 Wall., 139). Paul *v.* Virginia (8 Wall., 168). Board of Public Works *v.* Columbia College (17 Wall., 521). Thompson *v.* Whitman (18 Wall., 457). Pennoyer *v.* Nebb (95 U. S., 714). Bonaparte *v.* Tax Court (104 U. S., 592). Robertson *v.* Pickrell (109 U. S., 608). Brown et al. *v.* Houston, collector, et al. (114 U. S., 622). Hanley *v.* Donoghue (116 U. S., 1). Renaud *v.* Abbott (116 U. S., 277). Borer *v.* Chapman (119 U. S., 587). Chic. and Alton R. R. *v.* Wiggins Ferry Co. (119 U. S., 615). Cole *v.* Cunningham (133 U. S., 107). Blount *v.* Walker (134 U. S., 607). Texas & Pacific Ry. Co. *v.* Southern Pacific Co. (137 U. S., 48). Simmons *v.* Saul (138 U. S., 439). Reynolds *v.* Stockton (140 U. S., 254). Carpenter *v.* Strange (141 U. S., 87). Huntington *v.* Attrill (146 U. S., 657). Glenn *v.* Garth (147 U. S., 360). Laing *v.* Rigney (160 U. S., 531). Chicago, &c., Ry. Co. *v.* Sturm (174 U. S., 710). Thormann *v.* Frame (176 U. S., 350). Hancock Ntl. Bank *v.* Farnum (176 U. S., 640). Clarke *v.* Clarke (178 U. S., 186). W. W. Cargill Co. *v.* Minnesota (180 U. S., 452). Wilkes County *v.* Coler (180 U. S., 506). Johnson *v.* N. Y. Life Ins. Co. (187 U. S., 491). Andrews *v.* Andrews (188 U. S., 14). Blackstone *v.* Miller (188 U. S., 189). Commercial Publishing Co. *v.* Beckwith (188 U. S., 567). Finney *v.* Guy (189 U. S., 335). Anglo-Am. Prov. Co. *v.* Davis Prov. Co (191 U. S., 373). Wabash R. R. Co. *v.* Flannigan (192 U. S., 29). German Savings Society *v.* Dormitzer (192 U. S., 125). Wedding *v.* Meyler (192 U. S., 573). National Mutual B. & L. Ass'n. *v.* Brahan (193 U. S., 635). Minnesota *v.* Northern Securities Co (194 U. S., 48). National Exchange Bank *v.* Wiley (195 U. S., 257). Jaster *v.* Currie (198 U. S., 144). Harris *v.* Balk (198 U. S., 215). Harding *v.* Harding (198 U. S., 317). Louisville & N. R. R. *v.* Deer (200 U. S., 176). Haddock *v.* Haddock (201 U. S., 562). Northern Assurance Co. *v.* Grand View Bldg. Assn. (203 U. S., 106). Old Wayne Mut. Assn. *v.* McDonough (204 U. S., 8). Wetmore *v.* Karrick (205 U. S., 141). Tilt *v.* Kelsey (207 U. S., 43). Leathe *v.* Thomas (207 U. S., 93). Brown *v.* Fletcher's Estate (210 U. S., 82). Fauntleroy *v.* Lum (210 U. S., 230). Bagley *v.* General Fire Extinguisher Co. (212 U. S., 477). A., T. & S. F. Ry. Co. *v.* Sowers (213 U. S., 55). Smithsonian Institution *v.* St. John (214 U. S., 19). Fall *v.* Eastin (215 U. S., 1). Everett *v.* Everett (215 U. S., 203). Olmsted *v.* Olmsted (216 U. S., 386).

A Canadian judgment sued on in Alaska will be given full faith and credit as a cause of action and treated as conclusive evidence of matters adjudged therein, subject only to the defense of want of jurisdiction, mistake, or fraud. (Alaska Commercial Co. *v.* Debney, 2 Alaska Rep., 503.)

SECTION 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank of United States *v.* Devereux (5 Cr., 61). Gassies *v.* Ballou (6 Pet., 761). The State of Rhode Island *v.* The Commonwealth of Massachusetts (12 Pet., 657). The Bank of Augusta *v.* Earle (13 Pet., 519). Moore *v.* The People of the State of Illinois (14 How., 13). Conner et al. *v.* Elliot et al. (18 How., 591). Dred Scott v. Sandford (19 How., 393). Crandall *v.* State of Nevada (6 Wall., 35). Woodruff *v.* Parham (8 Wall., 123). Paul *v.* Virginia (8 Wall., 168). Downham *v.* Alexandria Council (10 Wall., 173). Liverpool Insurance Company *v.* Massachusetts (10 Wall., 566). Ward *v.* Maryland (12 Wall., 418). Slaughterhouse Cases (16 Wall., 36). Bradwell *v.* The State (16 Wall., 130). Chemung Bank *v.* Lowery (93 U. S., 72). McCready *v.* Virginia (94 U. S., 391). Brown *v.* Houston (114 U. S., 622). Philadelphia Fire Association *v.* New York (119 U. S., 110). Pembina Mining Co. *v.* Penna. (125 U. S., 181). Kimmish *v.* Ball (129 U. S., 217). Cole *v.* Cunningham (133 U. S., 107). Leisy *v.* Hardin (135 U. S., 100). Minnesota *v.* Barber (136 U. S., 313). Manchester *v.* Massachusetts (139 U. S., 240). McKane *v.* Durston (153 U. S., 684). Pittsburgh & So. Coal Co. *v.* Bates (156 U. S., 577). Vance *v.* W. A. Vandercook, No. 1 (170 U. S., 438). Blake *v.* McClung (172 U. S., 239). Blake *v.* McClung (176 U. S., 59). Sully *v.* Am. Ntl. Bank (178 U. S., 289). Williams *v.* Fears (179 U. S., 270). Reymann Brewing Co. *v.* Brister (179 U. S., 445). Travellers Ins. Co. *v.* Connecticut (185 U. S., 364). Reid *v.* Colorado (187 U. S., 137). Chadwick *v.* Kelley (187 U. S., 540). Diamond Glue Co. *v.* U. S. Glue Co. (187 U. S., 611). Blackstone *v.* Miller (188 U. S., 189). Anglo American Provision Co. *v.* Davis Provision Co. (191 U. S., 373). Chambers *v.* Baltimore & Ohio Railroad Co. (207 U. S., 142). Hudson Water Co. *v.* McCarter (209 U. S., 349).

[2]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which

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he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Holmes *v.* Jennison et al. (14 Pet., 540). Commonwealth of Kentucky *v.* Dennison, governor (24 How., 66). Taylor *v.* Tainter (16 Wall., 366). Carroll County *v.* Smith (111 U. S., 556). Ex parte Reggel (114 U. S., 642). Mahon *v.* Justice (127 U. S., 700). Lascelles *v.* Georgia (148 U. S., 537). Pearce *v.* Texas (155 U. S., 311). Utter *v.* Franklin (172 U. S., 416). Munsey *v.* Clough (196 U. S., 364). Matter of Strauss (197 U. S., 324). Pettibone *v.* Nichols (203 U. S., 192). Appleyard *v.* Mass. (203 U. S., 222). McNichols *v.* Pease (207 U. S., 100). Bassing *v.* Cady (208 U. S., 386). Pierce *v.* Creesey (210 U. S., 387). Marbles *v.* Creesey (215 U. S., 63).

[3] No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

Prigg *v.* The Commonwealth of Pennsylvania (16 Pet., 539). Jones *v.* Van Zandt (5 How., 215). Strader et al. *v.* Graham (10 How., 82). Moore *v.* The People of the State of Illinois (14 How., 13). Dred Scott *v.* Sanford (19 How., 393). Ableman *v.* Booth and United States *v.* Booth (21 How., 506). Callan *v.* Wilson (127 U. S., 540). Nashville, Chattanooga, etc., Rwy. *v.* Alabama (128 U. S., 96).

SECTION 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

American Insurance Company et al. *v.* Canter (356 bales cotton) (1 Pet., 511). Pollard's Lessee *v.* Hagan (3 How., 212). Cross et al. *v.* Harrison (16 How., 164). Benson *v.* United States (146 U. S., 325). Ward *v.* Race Horse (163 U. S., 504). Bolln *v.* Nebraska (176 U. S., 83). Louisiana *v.* Mississippi (202 U. S., 1).

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

McCulloch *v.* State of Maryland (4 Wh., 316). American Insurance Company *v.* Canter (1 Pet., 511). United States *v.* Gratiot et al. (14 Pet., 526). United States *v.* Rogers (4 How., 567). Cross et al. *v.* Harrison (16 How., 164). Muckey et al. *v.* Coxe (18 How., 100). Dred Scott *v.* Sandford (19 How., 393). Gibson *v.* Chouteau (13 Wall., 92). Clinton *v.* Englebert (13 Wall., 434). Beall *v.* New Mexico (16 Wall., 535). National Bank *v.* Yankton County (101 U. S., 129). United States *v.* Waddell (112 U. S., 76). Van Brocklin *v.* State of Tennessee (117 U. S., 151). Clayton *v.* Utah Territory (132 U. S., 632). Geofroy *v.* Riggs (133 U. S., 258). Davis *v.* Beason (133 U. S., 333). Wisconsin Central R. Rd. Co. *v.* Price County (133 U. S., 496). Cope *v.* Cope (137 U. S., 682). Mormon Church *v.* U. S. (136 U. S., 1). Jones *v.* United States (137 U. S., 202). St. Paul, Minneapolis, etc., Railway Co. *v.* Phelps (137 U. S., 528). Talton *v.* Mayes (163 U. S., 376). American Publishing Co. *v.* Fisher (166 U. S., 464). Camfield *v.* United States (167 U. S., 518). Thompson *v.* Utah (170 U. S., 343). Green Bay & Mississippi Canal Co. *v.* Patten Paper Co., (173 U. S., 179). Neely *v.* Henkel (No. 1) (180 U. S., 109). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* United States (182 U. S., 222). Downes *v.* Bidwell (182 U. S., 244). Dooley *v.* United States (183 U. S., 151). Fourteen Diamond Rings *v.* United States (183 U. S., 176). Hawaii *v.* Mankichi (190 U. S., 197). Binns *v.* United States (194 U. S., 486). Dorr *v.* United States (195 U. S., 138). Rassmussen *v.* United States (197 U. S., 516). Louisiana *v.* Mississippi (202 U. S., 1). Kansas *v.* Colorado (206 U. S., 46). Grafton *v.* United States (206 U. S., 333). United States *v.* Heinsgen (206 U. S., 370) Ponce *v.* Roman Catholic Church (210 U. S., 297). Atchison, Topeka & Santa Fe Ry. Co. *v.* Sowers (213 U. S., 55). El Paso & Northeastern Ry. Co. *v.* Gutierrez (215 U. S., 87). Weems *v.* United States (217 U. S., 349).

The district court of Alaska acts in a dual capacity; as a Territorial court and also to administer the laws of the United States applicable to the district. (U. S. *v.* Doo-Noch-Keen, 2 Alaska Rep., 624.)

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each

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of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Luther *v.* Borden (7 How., 1). Texas *v.* White (7 Wall., 700). In re Duncan (139 U. S., 449). Taylor et al. *v.* Beckham (No. 1) (178 U. S., 548). South Carolina *v.* United States (199 U. S., 437). Elder *v.* Colorado ex rel. Badgley (204 U. S., 85).

## Article V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Hollingsworth et al. *v.* Virginia (3 Dallas, 378).

## Article VI.

[1]All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2]This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Hayburn's Case (2 Dall., 409). Ware *v.* Hylton (3 Dall., 199). Calder and Wife *v.* Bull and Wife (3 Dall., 386). Marbury *v.* Madison (1 Cr., 137). Chirac *v.* Chirac (2 Wh., 259). McCulloch *v.* The State of Maryland (4 Wh., 316). Society *v.* New Haven (8 Wh., 464). Gibbons *v.* Ogden (9 Wh., 1). Foster and Elam *v.* Neilson (2 Pet., 253). Buckner *v.* Finley (2 Pet., 586). Worcester *v.* State of Georgia (6 Pet., 515). Kennett et al. *v.* Chambers (14 How., 38). Dodge *v.* Woolsey (18 How., 331). State of New York *v.* Dibble (21 How., 366). Ableman *v.* Booth and United States *v.* Booth (21 How., 506). Sinnot *v.* Davenport (22 How., 227). Foster *v.* Davenport (22 How., 244). Haver *v.* Yaker (9 Wall., 32). Clafflin *v.* Houseman, assignee (93 U. S., 130). United States *v.* 43 Gallons of Whisky (93 U. S., 188). Hauenstein *v.* Lynham (100 U. S., 483). Neal *v.* Delaware (103 U. S., 370). Ex parte Crow Dog (109 U. S., 556). Carroll County *v.* Smith (111 U. S., 556). Head Money Cases (112 U. S., 580). Van Brocklin *v.* State of Tennessee (117 U. S., 151). United States *v.* Rauscher (119 U. S., 407). Kerr *v.* Illinois (119 U. S., 436). Whitney *v.* Robertson (124 U. S., 190). the Chinese Exclusion Cases (130 U. S., 581). Geofroy *v.* Riggs (133 U. S., 258). In re Neagle (135 U. S., 1). Cherokee Nation *v.* Kansas Ry. Co. (135 U. S., 641). Cook Co. *v.* Calumet & Chicago Canal Co. (138 U. S., 635). Horner *v.* United States (143 U. S., 570). Fong Yue Ting *v.* United States (149 U. S., 698). Gulf, Colorado & Santa Fe Railway Co. *v.* Hefley (158 U. S., 98). In re Quarles *v.* Butler (158 U. S., 532). Ward *v.* Race Horse (163 U. S., 504). McClellan *v.* Chipman (164 U. S., 347). Smyth *v.* Ames (169 U. S., 466). Missouri, Kansas & Texas Railway Co. *v.* Haber (169 U. S., 613). Ohio *v.* Thomas (173 U. S., 276). De Lima *v.* Bidwell (182 U. S., 1). Dooley *v.* United States (182 U. S., 222). Downes *v.* Bidwell (182 U. S., 244). Fourteen Diamond Rings *v.* United States (183 U. S., 176). Lone Wolf *v.* Hitchcock (187 U. S., 553). South Carolina *v.* United States (199 U. S., 437). Berea College *v.* Kentucky (211 U. S., 45). Paddell *v.* City of New York (211 U. S., 446). McLean *v.* Arkansas (211 U. S., 539). Atchison, Topeka & Santa Fe Ry. Co. *v.* Sowers (213 U. S., 55). Sanchez *v.* United States (216 U. S., 167).

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[3]The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Ex parte Garland (4 Wall., 333). Davis v. Beason (133 U. S., 333). Mormon Church v. United States (136 U. S., 1).

ARTICLE VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names,

G° WASHINGTON
*Presidt and deputy from Virginia*

*New Hampshire.*

JOHN LANGDON
NICHOLAS GILMAN

*Massachusetts.*

NATHANIEL GORHAM
RUFUS KING

*Connecticut.*

WM SAML JOHNSON
ROGER SHERMAN

*New York.*

ALEXANDER HAMILTON

*New Jersey.*

WIL: LIVINGSTON
DAVID BREARLEY
WM PATTERSON
JONA: DAYTON

*Pennsylvania.*

B. FRANKLIN
ROBT. MORRIS
THOS. FITZSIMONS
JAMES WILSON
THOMAS MIFFLIN
GEO. CLYMER
JARED INGERSOLL
GOUV MORRIS

*Delaware.*

GEO: READ
JOHN DICKINSON
JACO: BROOM
GUNNING BEDFORD jun
RICHARD BASSETT

*Maryland.*

JAMES MCHENRY
DANL CARROLL
DAN: of ST THOS JENIFER

*Virginia.*

JOHN BLAIR—
JAMES MADISON JR.

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*North Carolina.*

WM BLOUNT — RICHD DOBBS SPAIGHT,
HU WILLIAMSON

*South Carolina.*

J. RUTLEDGE — CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY — PIERCE BUTLER.

*Georgia.*

WILLIAM FEW — ABR BALDWIN

Attest: WILLIAM JACKSON, *Secretary.*

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ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Terret et al. *v.* Taylor et al. (9 Cr., 43). Vidal et al. *v.* Girard et al. (2 How., 127). Ex parte Garland (4 Wall., 333). United States *v.* Cruikshank et al. (92 U. S., 542). Reynolds *v.* United States (98 U. S., 145). Spies *v.* Illinois (123 U. S., 131). Davis *v.* Beason (133 U. S., 333). Eilenbecker *v.* Plymouth County (134 U. S., 31). Mormon Church *v.* United States (136 U. S., 1). In re Rapier (143 U. S., 110). Horner *v.* United States (143 U. S., 207). Bradfield *v.* Roberts (175 U. S., 291). Turner *v.* Williams (194 U. S., 279). Jack *v.* Kansas (199 U. S., 372). Quick Bear *v.* Leupp (210 U. S., 50). Twining *v.* New Jersey (211 U. S., 78).

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Presser *v.* Illinois (116 U. S., 252). Spies *v.* Illinois (123 U. S., 131). Eilenbecker *v.* Plymouth County (134 U. S., 31). Jack *v.* Kansas (199 U. S., 372). Twining *v.* New Jersey (211 U. S., 78).

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Spies *v.* Illinois (123 U. S., 131). Eilenbecker *v.* Plymouth County (134 U. S., 31). Jack *v.* Kansas (199 U. S., 372). Twining *v.* New Jersey (211 U. S., 78).

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*The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

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## [ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Smith *v.* State of Maryland (18 How., 71). Murray's Lessee et al. *v.* Hoboken Land and Improvement Company (18 How., 272). Ex parte Milligan (4 Wall., 2). Boyd *v.* United States (116 U. S., 616). Spies *v.* Illinois (123 U. S., 131). Eilenbecker *v.* Plymouth County (134 U. S., 31). Fong Yue Ting *v.* United States (149 U. S., 698). Interstate Commerce Commission *v.* Brimson (154 U. S., 447). In re Chapman (166 U. S., 661). Adams *v.* New York (192 U. S., 585). Morris *v.* Hitchcock (194 U. S., 384). Public Clearing House *v.* Coyne (194 U. S., 497). Interstate Commerce Commission *v.* Baird (194 U. S., 25). Jack *v.* Kansas (199 U. S., 372). Hale *v.* Henkel (201 U. S., 43). Consolidated Rendering Co. *v.* Vermont (207 U. S., 541). American Tobacco Co. *v.* Werckmeister (207 U. S., 284). Consolidated Rendering Co. *v.* Vermont (207 U. S., 541). Twining *v.* New Jersey (211 U. S., 78). Hammond Packing Co. *v.* Arkansas (212 U. S., 322). Bagley *v.* General Fire Extinguishing Co. (212 U. S., 477). Smithsonian Institution *v.* St. John (214 U. S., 19). Rhodus *v.* Manning (217 U. S., 597).

The constitutional objection that no warrant shall issue but upon probable cause, describing the ——— person to be seized, is waived by voluntarily giving bonds for further appearance. (U. S. *v.* Meyers, 2 Alaska Rep., 158.)

## [ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States *v.* Perez (9 Wh., 579). Barron *v.* The City of Baltimore (7 Pet., 243). Fox *v.* Ohio (5 How., 410). West River Bridge Company *v.* Dix et al. (6 How., 507). Mitchell *v.* Harmony (13 How., 115). Moore, ex., *v.* The People of the State of Illinois (14 How., 13). Murray's Lessee et al. *v.* Hoboken Land and Improvement Company (18 How., 272). Dynes *v.* Hoover (20 How., 65). Withers *v.* Buckley et al. (20 How., 84). Gilman *v.* The City of Sheboygan (2 Black., 510). Ex parte Milligan (4 Wall., 2). Twitchell *v.* The Commonwealth (7 Wall., 321). Hepburn *v.* Griswold (8 Wall., 603). Miller *v.* United States (11 Wall., 268). Legal Tender Cases (12 Wall., 457). Pumpelly *v.* Green Bay Company (13 Wall., 166). Osborn *v.* Nicholson (13 Wall., 654). Ex parte Lange (18 Wall., 163). Kohl et al. *v.* United States (91 U. S., 367). Sinking Fund Cases (99 U. S., 700). Cole *v.* La Grange (113 U. S., 1). Ex parte Wilson (114 U. S., 417). Brown *v.* Grant (116 U. S., 207). Boyd *v.* United States (116 U. S., 616). Makin *v.* United States (117 U. S., 348). Ex parte Bain (121 U. S., 1). Parkinson *v.* United States (121 U. S., 281). Spies *v.* Illinois (123 U. S., 131). Sands *v.* Manistee River Improvement Company (123 U. S., 288). Mugler *v.* Kansas (123 U. S., 623). Great Falls Manufacturing Company *v.* The Attorney General (124 U. S., 581). United States *v.* De Walt (128 U. S., 393). Huling *v.* Kaw Valley Railway and Improvement Company (130 U. S., 559). Freeland *v.* Williams (131 U. S., 405). Cross *v.* North Carolina (132 U. S., 131). Manning *v.* French (133 U. S., 186). Searle *v.* School Dist. No. 2 (133 U. S., 553). Palmer *v.* McMahon (133 U. S., 660). Eilenbecker *v.* Plymouth County (134 U. S., 31). Chic., Mil. & St. Paul Rwy. Co. *v.* Minnesota (134 U. S., 418). Wheeler *v.* Jackson (137 U. S., 245). Holden *v.* Minnesota (137 U. S., 245). Caldwell *v.* Texas (137 U. S., 692). Cherokee Nation *v.* Kansas Ry. Co. (135 U. S., 641). Kaukauna Water Power Co. *v.* Miss. Canal Co. (142 U. S., 254). New Orleans *v.* N. O. Water W'ks (142 U. S., 79). Counselman *v.* Hitchcock (142 U. S., 547). Simmonds *v.* U. S. (142 U. S., 148). Horn Silver Mining Co. *v.* N. Y. (143 U. S., 305). Hallinger *v.* Davis (146 U. S., 314). Shoemaker *v.* U. S. (147 U. S., 282). Thorington *v.* Montgomery (147 U. S., 490). Yesler *v.* Wash'n Harbor Line Coms'rs (146 U. S., 646). Monongahela Nav. Co. *v.* U. S. (148 U. S., 312). Fong Yuen Ting *v.* U. S. (149 U. S., 698). In re Lennon (150 U. S., 393). Pitts., C., C. & St. L. *v.* Backus (154 U. S., 421). Interstate Com. Comsn. *v.* Brimson (154 U. S., 447). Pearce *v.* Texas (155 U. S., 311). Linford

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v. Ellison (155 U. S., 503). Andrews v. Swartz (156 U. S., 272). Pittsburgh & Southern Coal Co. v. La. (156 U. S., 590). St. L. & S. F. Rwy. Co. v. Gill (156 U. S., 649). Johnson v. Sayre (158 U. S., 109). Sweet v. Rechel (159 U. S., 380). Brown v. Walker (161 U. S., 591). Wong Wing v. U. S. (163 U. S., 228). Talton v. Mayes (163 U. S., 376). In re Chapman (166 U. S., 661). Bauman v. Ross (167 U. S., 548). Wilson v. Lambert (168 U. S., 611). Green Bay, &c., Canal Co. v. Patten Paper Co. (172 U. S., 58). Henderson Bridge Co. v. Henderson City (173 U. S., 592). Scranton v. Wheeler (179 U. S., 141). Wight v. Davidson (181 U. S., 371). Capitol City Dairy Co. v. Ohio (183 U. S., 238). Hanover Ntl. Bank v. Moyses (186 U. S., 181). Dreyer v. Illinois (187 U. S., 71). Lone Wolf v. Hitchcock (187 U. S., 553). United States v. Lynah (188 U. S., 445). The Japanese Immigrant Case (189 U. S., 86). Hawaii v. Mankichi (190 U. S., 197). Bedford v. United States (192 U. S., 217). Buttfield v. Stranahan (192 U. S., 470). Interstate Commerce Commission v. Baird (194 U. S., 25). Beavers v. Henkel (194 U. S., 73). Turner v. Williams (194 U. S., 279). Public Clearing House v. Coyne (194 U. S., 497). McCray v. United States (195 U. S., 27). Schick v. United States (195 U. S., 65). Kepner v. United States (195 U. S., 100). Rassmussen v. United States (197 U. S., 516). United States v. Ju Toy (198 U. S., 253). Reduction Co. v. Sanitary Works (199 U. S., 306). Gardner v. Michigan (199 U. S., 325). Jack v. Kansas (199 U. S., 372). South Carolina v. United States (199 U. S., 437). Manigault v. Springs (199 U. S., 473). Trono v. United States (199 U. S., 521). Howard v. Kentucky (200 U. S., 164). Southern Pacific R. R. Co. v. United States (200 U. S., 341). C., B. & Q. Ry. Co. v. Drainage Commissioners (200 U. S., 561). Hale v. Henkel (201 U. S., 43). McAlister v. Henkel (201 U. S., 90). Nelson v. U. S. (201 U. S., 92). Sawyer v. U. S. (202 U. S., 150). Millard v. Roberts (202 U. S., 429). Matter of Moran (203 U. S., 96). Union Bridge Co. v. U. S. (204 U. S., 364). Serra v. Mortiga (204 U. S., 470). Martin v. District of Columbia (205 U. S., 135). Barrington v. Missouri (205 U. S., 483). Ellis v. U. S. (206 U. S., 246). Grafton v. U. S. (206 U. S., 333). United States v. Heinszen (206 U. S., 370). Hunter v. Pittsburgh (207 U. S., 161). Taylor v. U. S. (207 U. S., 120). Shoener v. Pennsylvania (207 U. S., 188). American Tobacco Co. v. Werckmeister (207 U. S., 284). Consolidated Rendering Co. v. Vermont (207 U. S., 541). Adair v. U. S. (208 U. S., 161). Bassing v. Cady (208 U. S., 386). Bien v. Robinson (208 U. S., 423). Twining v. New Jersey (211 U. S., 78). Garfield v. Goldsby (211 U. S., 249). N. Y. Central R. R. v. U. S. (212 U. S., 481). Goon Shung v. U. S. (212 U. S., 566). Keerl v. Montana (213 U. S., 135). United States v. Delaware & Hudson Co. (213 U. S., 366). District of Columbia v. Brooke (214 U. S., 138). Oceanic Navigation Co. v. Stranahan (214 U. S., 320). Sanchez v. United States (216 U. S., 167). Monongahela Bridge Co. v. United States (216 U. S., 177). Brantley v. Georgia (217 U. S., 284). United States v. Welch (217 U. S., 333). Rhodus v. Manning (217 U. S., 597).

## [Article VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States v. Cooledge (1 Wh., 415). Ex parte Kearney (7 Wh., 38). United States v. Mills (7 Pet., 142). Baron v. City of Baltimore (7 Pet., 243). Fox v. Ohio (5 How., 410). Withers v. Buckley et al. (20 How., 84). Ex parte Milligan (4 Wall., 2). Twitchell v. The Commonwealth (7 Wall., 321). Miller v. The United States (11 Wall., 268). United States v. Cook (17 Wall., 168). United States v. Cruikshank et al. (92 U. S., 542). Reynolds v. United States (98 U. S., 145). Spies v. Illinois (123 U. S., 131). Brooks v. Missouri (124 U. S., 394). Callan v. Wilson (127 U. S., 540). Eilenbecker v. Plymouth County (134 U. S., 31). Jones v. United States (137 U. S., 202). Cook v. United States (138 U. S., 157). In re Shubuya Jugiro (140 U. S., 291). In re Ross (140 U. S., 453). Hallinger v. Davis (146 U. S., 314). Fong Yue Ting v. United States (149 U. S., 698). Mattox v. United States (156 U. S., 237). Rosen v. United States (161 U. S., 29). United States v. Zucker (161 U. S., 475). Wong Wing v. United States (163 U. S., 228). Creamer v. Washington (168 U. S., 124). Thompson v. Utah (170 U. S., 343). Maxwell v. Dow (176 U. S., 581). Motes v. United States (178 U. S., 458). Fidelity and Deposit Co. v. United States (187 U. S., 315). Hawaii v. Mankichi (190 U. S., 197). West v. Louisiana (194 U. S., 258). Turner v. Williams (194 U. S., 279). Lloyd v. Dollison (194 U. S., 445). Schirk v. United States (195 U. S., 65). Dorr v. United States (195 U. S., 138). Rassmussen v. United States (197 U. S., 516). Beavers v. Haubert (198 U. S., 77). Marvin v. Trout (199 U. S., 212). Jack v. Kansas (199 U. S., 372). Howard v. Kentucky (200 U. S., 164). Martin v. Texas (200 U. S., 316). Sawyer v. United States (202 U. S., 150). Burton v. United States (202 U. S., 344). Serra v. Mortiga (204 U. S., 470). Tinsley v. Treat (205 U. S.,

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20). Ughbanks *v.* Armstrong (208 U. S., 481). Armour Packing Co. *v.* U. S. (209 U. S., 56). Twining *v.* New Jersey (211 U. S., 78). Knoxville *v.* Knoxville Water Co. (212 U. S., 1). Goon Shung *v.* United States (212 U. S., 566). United States *v.* Stevenson (215 U. S., 190). Haas *v.* Henkel (216 U. S., 462).

The provisions of sec. 1003 of the Code of Civil Procedure that in trials for misdemeanor six persons shall constitute a legal jury, is repugnant to the sixth amendment. (Rasmussen *v.* United States, 197 U. S. Rep., 522; 2 Alaska Rep., 695. Gurvich *v.* U. S., 198 U. S. Rep., 581; 2 Alaska Rep., 695.)

## [ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

United States *v.* La Vengeance (3 Dall., 297). Bank of Columbia *v.* Oakley (4 Wh., 235). Parsons *v.* Bedford et al. (3 Pet., 433). Lessee of Livingston *v.* Moore et al. (7 Pet., 469). Webster *v.* Reid (11 How., 437). State of Pennsylvania *v.* The Wheeling, &c., Bridge Company et al. (13 How., 518). The Justices *v.* Murray (9 Wall., 274). Edwards *v.* Elliott et al. (21 Wall., 532). Pearson *v.* Yewdall (95 U. S., 294). McElrath *v.* United States (102 U. S., 426). Spies *v.* Illinois (123 U. S., 131). Callan *v.* Wilson (127 U. S., 540). Arkansas Valley Land & Cattle Co. *v.* Mann (130 U. S., 69). Eilenbecker *v.* Plymouth County (134 U. S., 31). Whitehead *v.* Shattuck (138 U. S., 146). Scott *v.* Neely (140 U. S., 106). Cates *v.* Allen (149 U. S., 451). Fong Yue Ting *v.* United States (149 U. S., 698). Coughran *v.* Bigelow (164 U. S., 301). Walker *v.* New Mexico & Southern Pacific Railroad (165 U. S., 593). Chicago, Burlington & Quincy *v.* Chicago (166 U. S., 226). American Pub. Co. *v.* Fisher (166 U. S., 464). Guthrie Ntl. Bank *v.* Guthrie (173 U. S., 528). Fidelity & Deposit Co. *v.* United States (187 U. S., 315). Rasmussen *v.* United States (197 U. S., 516). Marvin *v.* Trout (199 U. S., 212). Jack *v.* Kansas (199 U. S., 372). Fidelity Mutual Life Ins. Co. *v.* Clark (203 U. S., 64). Bien *v.* Robinson (208 U. S., 423). In re Wood (210 U. S., 246). Twining *v.* New Jersey (211 U. S., 78).

The guarantee to right of a trial by jury, in suit at common law, where value in controversy exceeds $20, held applicable in action of an equitable nature to try issues of titles, ouster, and damages. (Seliner *v.* McKay, 2 Alaska Rep., 564.)

## [ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Pervear *v.* Commonwealth (5 Wall., 475). Spies *v.* Illinois (123 U. S., 131). Manning *v.* French (133 U. S., 186). Eilenbecker *v.* Plymouth County (134 U. S., 31). In re Kemmler (136 U. S., 436). McElvaine *v.* Brush (142 U. S., 155). O'Neill *v.* Vermont (144 U. S., 323). McDonald *v.* Massachusetts (180 U. S., 311). Howard *v.* Fleming (191 U. S., 126). Jack *v.* Kansas (199 U. S., 372). Ughbanks *v.* Armstrong (208 U. S., 481). Twining *v.* New Jersey (211 U. S., 78). Weems *v* United States (217 U. S., 349).

## [ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Lessee of Livingston *v.* Moore et al. (7 Pet., 469). Spies *v.* Illinois (123 U. S., 131). Jack *v.* Kansas (199 U. S., 372).

## [ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Chisholm, ex., *v.* State of Georgia (2 Dall., 419). Hollingsworth et al. *v.* The State of Virginia (3 Dall., 378). Martin *v.* Hunter's Lessee (1 Wh., 304). McCulloch *v.* State of Maryland (4 Wh., 316). Anderson *v.* Dunn (6 Wh., 204). Cohen *v.* Virginia (6 Wh., 264). Osborn *v.* United States Bank (9 Wh., 738). Buchler *v.* Finley (2 Pet., 586). Ableman *v.* Booth (21 How., 506). The Collector *v.* Day (11 Wall., 113). Claflin *v.* Houseman, assignee (93 U. S., 130). Inman Steamship Company *v.* Tinker (94 U. S., 238). United States *v.* Fox (94 U. S.,

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315). Tennessee *v.* Davis (100 U. S., 257). Church *v.* Kelsey (121 U. S., 282). Ouachita Packet Co. *v.* Aiken (121 U. S., 444). W. U. Tel. Co. *v.* Pendleton (122 U. S., 347). Spies *v.* Illinois (123 U. S., 131). Bowman *v.* Chicago & Northwestern Ry. Co. (125 U. S., 465). Mahon *v.* Justice (127 U. S., 700). Leisy *v.* Hardin (135 U. S., 100). Manchester *v.* Mass. (139 U. S., 240). Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429). Forsyth *v.* Hammond (166 U. S., 506). St. Anthony Falls Water Power Co. *v.* St. Paul Water Commissioners (168 U. S., 349). Missouri, Kansas & Texas Railway Co. *v.* Haber (169 U. S., 613). Hancock Mutual Life Ins. Co. *v.* Warren (181 U. S., 73). Kansas *v.* Colorado (185 U. S., 125). Andrews *v.* Andrews (188 U. S., 14). Northern Securities Co. *v.* United States (193 U. S., 197). Turner *v.* Williams (194 U. S., 279). McCray *v.* United States (195 U. S., 27). Schick *v.* United States (195 U. S., 65). Central of Georgia Ry. Co. *v.* Murphey (196 U. S., 194). Matter of Heff (Indian) (197 U. S., 488). Jack *v.* Kansas (199 U. S., 372). South Carolina *v.* United States (199 U. S., 437). Hodges *v.* United States (203 U. S., 1). Kansas *v.* Colorado (206 U. S., 46). Prentis *v.* Atlantic Coast Line (211 U. S., 210). Keller *v.* United States (213 U. S., 138). Adams Express Co. *v.* Kentucky (214 U. S., 218). Western Union Telegraph Co. *v.* Chiles (214 U. S., 274). Holmgren *v.* United States (217 U. S., 509).

## Article XI.*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

State of Georgia *v.* Brailsford et al. (2 Dall., 402). Chisholm, ex., *v.* State of Georgia (2 Dall., 419). Hollingsworth et al. *v.* Virginia (3 Dall., 378). Cohen *v.* Virginia (6 Wh., 264). Osborn *v.* United States Bank (9 Wh., 738). United States *v.* The Planters' Bank (9 Wh., 904). The Governor of Georgia *v.* Juan Madrazo (1 Pet., 110). Cherokee Nation *v.* State of Georgia (5 Pet., 1). Briscoe *v.* The Bank of the Commonwealth of Kentucky (11 Pet., 257). Curran *v.* State of Arkansas et al. (15 How., 304). Louisiana *v.* Jumel (107 U. S., 711). New Hampshire *v.* Louisiana (108 U. S., 76). Clark *v.* Barnard (108 U. S., 436). Cunningham *v.* Macon & Brunswick Railroad (109 U. S., 446). Poindexter *v.* Greenhow (114 U.S., 270). Allen, auditor, et al. *v.* Baltimore & Ohio R. R. Co. (119 U. S., 311). Hagood *v.* Southern (117 U. S., 52). Ralston *v.* Missouri Fund Commissioners (120 U. S., 390). In re Ayers (123 U. S., 443). Christian *v.* Atlantic & North Carolina R. R. Co. (133 U. S., 233). Lincoln County *v.* Luning (133 U. S., 529). Hans *v.* Louisiana (134 U. S., 1). North Carolina *v.* Temple (134 U. S., 22). New York Guaranty Co. *v.* Steele (134 U. S., 230). Coupon Cases (135 U. S., 662). Pennoyer *v.* McConnaughy (140 U. S., 1). United States *v.* Texas (143 U. S., 621). In re Tyler (149 U. S., 164). Reagan *v.* Farmers' Loan & Trust Co. (154 U. S., 362). Reagan *v.* Mercantile Trust Co. (154 U. S., 413). Scott *v.* Donald (165 U. S., 58). Scott *v.* Donald (165 U. S., 107). Tindal *v.* Wesley (167 U. S., 204). Smyth *v.* Ames (169 U. S., 466). Fitts *v.* McGhee (172 U. S., 516). Louisiana *v.* Texas (176 U. S., 1). Smith *v.* Reeves (178 U. S., 436). Scranton *v.* Wheeler (179 U. S., 141). Illinois Central Railroad Co. *v.* Adams (180 U. S., 28). Prout *v.* Starr (188 U. S., 537). South Dakota *v.* North Carolina (192 U. S., 286). Chandler *v.* Dix (194 U. S., 590). Jacobson *v.* Massachusetts (197 U. S., 11). Graham *v.* Folsom (200 U. S., 248). Gunter *v.* Atlantic Coast Line (200 U. S., 273). McNeill *v.* Southern Railway Co. (202 U. S., 543). Mississippi R. R. Commission *v.* Illinois Central R. R. (203 U. S., 335). Virginia *v.* West Virginia (206 U. S., 290). Ex parte Young (209 U. S., 123). General Oil Co. *v.* Crain (209 U. S., 211). Scully *v.* Bird (209 U. S., 481). Murray *v.* Wilson Distilling Co. (213 U. S., 151). Ludwig *v.* Western Union Telegraph Co. (216 U. S., 146). Western Union Telegraph Co. *v.* Andrews (216 U. S., 165).

## Article XII.†

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall

* The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on the 5th of March, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

† The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

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make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## ARTICLE XIII.*

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Dred Scott *v.* Sandford (19 How., 393). White *v.* Hart (13 Wall., 646). Osborn *v.* Nicholson (13 Wall., 654). Slaughterhouse Cases (16 Wall., 36). Ex parte Virginia (100 U. S., 339). Civil Rights Case (109 U. S., 3). Plessy *v.* Ferguson (163 U. S., 537). Robertson *v.* Baldwin (165 U. S., 275). Clyatt *v.* United States (197 U. S., 207). Patterson *v.* Bark *Eudora* (190 U. S., 169). Clyatt *v.* United States (197 U. S., 207). Hodges *v.* U. S. (203 U. S., 1). Bailey *v.* Alabama (211 U. S., 452).

## ARTICLE XIV.†

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make

*The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Onio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

†The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana,

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or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Strauder *v.* West Virginia (100 U. S., 303). Virginia *v.* Rivers (100 U. S., 313). Ex parte Virginia (100 U. S., 339). Missouri *v.* Lewis (101 U. S., 22). Civil Rights Cases (109 U. S., 3). Louisiana *v.* New Orleans (109 U. S., 285). Hurtado *v.* California (110 U. S., 516). Hagar *v.* Reclamation Dist. (111 U. S., 701). Elk *v.* Wilkins (112 U. S., 94). Head *v.* Amoskeag Mfg. Co. (113 U. S., 9). Barbier *v.* Connolly (113 U. S., 27). Provident Institution *v.* Jersey City (113 U. S., 506). Soon Hing *v.* Crowley (113 U. S., 703). Wurts *v.* Hoagland (114 U. S., 606). Ky. R. Rd. Tax Cases (115 U. S., 321). Campbell *v.* Holt (115 U. S., 620). Presser *v.* Illinois (116 U. S., 252). Stone *v.* Farmers' Loan and Trust Co. (116 U. S., 307). Arrowsmith *v.* Harmoning (118 U. S., 194). Yick Wo *v.* Hopkins (118 U. S., 356). Santa Clara Co. *v.* S. Pacific R. Rd. (118 U. S., 394). Phila. Fire Assn. *v.* N. Y. (119 U. S., 110). Schmidt *v.* Cobb (119 U. S., 286). Baldwin *v.* Frank (119 U. S., 678). Hayes *v.* Missouri (120 U. S., 68). Church *v.* Kelsey (121 U. S., 282). Pembina Mining Co. *v.* Penna. (125 U. S., 181). Spencer *v.* Merchant (125 U. S., 345). Dow *v.* Beidelman (125 U. S., 680). Bank of Redemption *v.* Boston (125 U. S., 60). Ro Bards *v.* Lamb (127 U. S., 58). Mo. Pac. Rwy. Co. *v.* Mackey (127 U. S., 205). Minneapolis and St. Louis Rwy. *v.* Herrick (127 U. S., 210). Powell *v.* Penna. (127 U. S., 678). Kidd *v.* Pearson (128 U. S., 1). Nashville, Chattanooga, &c., Rwy. *v.* Alabama (128 U. S., 96). Walston *v.* Navin (128 U. S., 578). Minneapolis and St. Louis Rwy. *v.* Beckwith (129 U. S., 26). Dent *v.* West Va. (129 U. S., 114). Huling *v.* Kaw Valley Rwy. and Improvement Co. (130 U. S., 559). Freeland *v.* Williams (131 U. S., 405). Cross *v.* North Carolina (132 U. S., 131). Pennie *v.* Reis (132 U. S., 464). Sugg *v.* Thornton (132 U. S., 524). Davis *v.* Beason (133 U. S., 333). Ellenbecker *v.* Plymouth Co. (134 U. S., 31). Bell Gap R. Rd. Co. *v.* Penna. (134 U. S., 232). Chicago, Milwaukee & St. Paul Rwy. *v.* Minnesota (134 U. S., 418). Home Ins. Co. *v.* N. Y. (134 U. S., 594). Louisville & Nashville R. Rd. Co. *v.* Woodson (134 U. S., 614). Home Ins. Co. *v.* N. Y. (134 U. S., 594). Leisy *v.* Hardin (135 U. S., 100). In re Kemmler (136 U. S., 436). York *v.* Texas (137 U. S., 15). Crowley *v.* Christensen (137 U. S., 89). Wheeler *v.* Jackson (137 U. S., 245). Holden *v.* Minnesota (137 U. S., 483). In re Converse (137 U. S., 624). Cadlwell *v.* Texas (137 U. S., 692). Kauffman *v.* Wootters (138 U. S., 285). Lesper *v.* Texas (139 U. S., 462). In re Manning (139 U. S., 504). Mabal *v.* Louisiana (139 U. S., 621). In re Duncan (139 U. S., 449). In re Shibuya Jugiro (139 U. S., 291). Lent *v.* Tillson (140 U. S., 316). New Orleans *v.* N. O. Water W'ks. (142 U. S., 79). McElvaine *v.* Brush (142 U. S., 155). Kaukauna Water Power Co. *v.* Miss. Canal Co. (142 U. S., 254). Charlotte Augusta & Col. R. Rd. Co. *v.* Gibbes (142 U. S., 386). Pacific Ex. Co. *v.* Siebert (142 U. S., 339). Horn Silver Mining Co. *v.* N. Y. (143 U. S., 305). Budd *v.* N. Y. (143 U. S., 517). Schwab *v.* Berggren (143 U. S., 442). Fielden *v.* Illinois (143 U. S., 452). N. Y. *v.* Squire (144 U. S., 175). Brown *v.* Smart (144 U. S., 454). McPherson *v.* Blacker (146 U. S., 1). Morley *v.* Lake Shore & Mich. Southern Ry. Co. (146 U. S., 162). Hallinger *v.* Davis (146 U. S., 314). Yesler *v.* Washington Harbor Line Comsrs. (146 U. S., 646). Butler *v.* Goreley (146 U. S., 303). Southern Pacific Co. *v.* Denton (146 U. S., 202). Thorington *v.* Montgomery (147 U. S., 490). Giozza *v.* Tiernan (148 U. S., 657). Paulsen *v.* Portland (149 U. S., 30). Minn. & St. L. Rwy. Co. *v.* Emmons (149 U. S., 364). Columbus So. Rwy. Co. *v.* Wright (151 U. S., 470). In re Frederick (149 U. S., 70). McNulty *v.* Calif. (149 U. S., 645). Lees *v.* U. S. (150 U. S., 476). Lawton *v.* Steele (152 U. S., 133). Montana Co. *v.* St. Louis Mining Co. (152 U. S., 160). Duncan *v.* Missouri (152

being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 20, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868, and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified it October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterwards ratified by either State.



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U. S., 377). McKane *v.* Durston (153 U. S., 684). Marchant *v.* Penna. R. R. Co. (153 U. S., 380). Brass *v.* Stoeser (153 U. S., 391). Scott *v.* McNeal (154 U. S., 34). Reagan *v.* Far. Loan & Trust Co. (154 U. S., 362). P., C., C. & St. L. R. R. Co. *v.* Backus (154 U. S., 421). Interstate Com. Comsn. *v.* Brimson (154 U. S., 447). Reagan *v.* Mercantile Trust Co. (154 U. S., 447). Pearce *v.* Texas (155 U. S., 311). Pittsburg & So. Coal Co. *v.* La. (156 U. S., 590). Andrews *v.* Swartz (156 U. S., 272). St. L. & S. F. Rwy. Co. *v.* Gill (156 U. S., 649). Stevens, admr., *v.* Nichols (157 U. S., 370). Bergemann *v.* Becker (157 U. S., 655). Quarles *v.* Butler (158 U. S., 532). Gray *v.* Connecticut (159 U. S., 74). Central Land Co. *v.* Laidley (159 U. S., 103). Moore *v.* Missouri (159 U. S., 673). Winona & St. Peter Land Co. *v.* Minn. (159 U. S., 528). Iowa Cent. Ry. Co. *v.* Iowa (160 U. S., 389). Eldridge *v.* Trezevant (160 U. S., 452). Laing *v.* Rigney (160 U. S., 531). Gibson *v.* Miss. (162 U. S., 565). Western Union Telegraph Co. *v.* Taggart (163 U. S., 1). Lowe *v.* Kansas (163 U. S., 81). Plessy *v.* Ferguson (163 U. S., 537). Talton *v.* Mayes (163 U. S., 376). Fallbrook Irrigation District *v.* Bradley (164 U. S., 112). Mo. Pac. Ry. Co. *v.* Nebraska (164 U. S., 403). Covington, &c., Turnpike Co. *v.* Sandford (164 U. S., 578). St. Louis, &c., Ry. Co. *v.* Mathews (165 U. S., 1). Gulf, &c., Ry. Co. *v.* Ellis (165 U. S., 150). Jones *v.* Brim (165 U. S., 180). Adams Ex. Co. *v.* Ohio (165 U. S., 194). Western Union Tel. Co. *v.* Indiana (165 U. S., 304). Allgeyer *v.* Louisiana (165 U. S., 578). Allen *v.* Georgia (166 U. S., 138). Adams Exp. Co. *v.* Kentucky (166 U. S., 171). Chicago, &c., R. R. Co. *v.* Chicago (166 U. S., 226). Gladson *v.* Minn. (166 U. S., 427). Long Island, &c., Co. *v.* Brooklyn (166 U. S., 685). Sentell *v.* New Orleans, &c., R. R. Co. (166 U. S., 698). Davis *v.* Mass. (167 U. S., 43). Merchants' Bank *v.* Pa. (167 U. S., 461). Turner *v.* New York (168 U. S., 90). Craemer *v.* Washington (168 U. S., 124). Hodgson *v.* Vermont (168 U. S., 262). Nobles *v.* Georgia (168 U. S., 398). McHenry *v.* Alford (168 U. S., 651). Holden *v.* Hardy (169 U. S., 366). Savings & Loan Society *v.* Multnomah County (169 U. S., 421). Smyth *v.* Ames (169 U. S., 466). Wilson *v.* North Carolina (169 U. S., 586). U. S. *v.* Wong Kim Ark. (169 U. S., 649). Backus *v.* Fort Street, &c., Co. (169 U. S., 557). Williams *v.* Miss. (170 U. S., 213). Galveston, &c., Ry. Co. *v.* Texas (170 U. S., 226). Magoun *v.* Ill. Trust & Savings Bank (170 U. S., 283). Williams *v.* Eggleston (170 U. S., 304). Tinsley *v.* Anderson (171 U. S., 101). King *v.* Mullins (171 U. S., 404). New York *v.* Roberts (171 U. S., 658). Meyer *v.* Richmond (172 U. S., 82). Blake *v.* McClung (172 U. S., 239). Norwood *v.* Baker (172 U. S., 269). Orient Ins. Co. *v.* Daggs (172 U. S., 557). Wilson *v.* Eureka City (173 U. S., 32). Central Loan & Trust Co. *v.* Campbell Commission Co. (173 U. S., 84). Dewey *v.* Des Moines (173 U. S., 193). St. Louis, &c., Ry. Co. *v.* Paul (173 U. S., 404). Henderson Bridge Co. *v.* Henderson City (173 U. S., 592). Lake Shore, &c., Ry. Co. *v.* Smith (173 U. S., 684). Atchison, &c., R. R. Co. *v.* Matthews (174 U. S., 96). Brown *v.* N. J. (175 U. S., 172). Tullis *v.* Lake Erie, &c., R. R. Co. (175 U. S., 348). Cumming *v.* Richmond County Board of Education (175 U. S., 528). Bolln *v.* Nebraska (176 U. S., 83). Clark *v.* Kansas City (176 U. S., 114). Roller *v.* Holly (176 U. S., 398). Weyerhaeuser *v.* Minn. (176 U. S., 550). Maxwell *v.* Dow (176 U. S., 581). Gundling *v.* Chicago (177 U. S., 183). Ohio Oil Co. *v.* Indiana (177 U. S., 190). Louisville, &c., R. R. Co. *v.* Schmidt (177 U. S., 230). Saranac Land & Timber Co. *v.* Comptroller of N. Y. (177 U. S., 318). Carter *v.* Texas (177 U. S., 442). L'Hote *v.* New Orleans (177 U. S., 587). Sully *v.* Am. Ntl. Bank (178 U. S., 289). Wheeler *v.* New York, &c., R. R. Co. (178 U. S., 321). Taylor *v.* Beckham (178 U. S., 548). Am. Sugar Refining Co. *v.* Louisiana (179 U. S., 89). Williams *v.* Fears (179 U. S., 270). New York *v.* Barker (179 U. S., 279). Wisconsin &c. R. R. Co. *v.* Jacobson (179 U. S., 287). Mason *v.* Missouri (179 U. S., 328). McDonald *v.* Mass. (180 U. S., 311). Cargill *v.* Minnesota (180 U. S., 452). Hancock Mutual Life Ins. Co. *v.* Warren (181 U. S., 73). French *v.* Barber Asphalt Paving Co. (181 U. S., 324). Tonawanda *v.* Lyon (181 U. S., 389). Webster *v.* Fargo (181 U. S., 394). Cass Farm Co. *v.* Detroit (181 U. S., 396). Detroit *v.* Parker (181 U. S., 399). Red River Valley Bank *v.* Craig (181 U. S., 548). Mallett *v.* North Carolina, 181 U. S., 589). Simon *v.* Craft (182 U. S., 427). Cotting *v.* Kansas &c. Co. (183 U. S., 79). Orr *v.* Gilman (183 U. S., 278). Florida Central &c. R. R. Co. *v.* Reynolds (183 U. S., 471.) Louisville &c. R. R. Co. *v.* Kentucky (183 U. S., 503). Nutting *v.* Mass. (183 U. S., 553). King *v.* Portland City (184 U. S., 61). Clark *v.* Titusville (184 U. S., 329). Booth *v.* Illinois (184 U. S., 425). Goodrich *v.* Detroit (184 U. S., 432). St. Louis Cons. Coal Co. *v.* Illinois (185 U. S., 203). Fidelity Mut. Life Assn. *v.* Mettler (185 U. S., 308). Travellers' Ins. Co. *v.* Connecticut (185 U. S., 364). Minneapolis &c. R. R. Co. *v.* Minnesota (186 U. S., 257). Turpin *v.* Lemon (187 U. S., 51). Dreyer *v.* Illinois (187 U. S., 71). Chadwick *v.* Kelley (187 U. S., 540). Otis *v.* Parker (187 U. S., 606). Billings *v.* Illinois (188 U. S., 97). Blackstone *v.* Miller (188 U. S., 189). Hooker *v.* Los Angeles (188 U. S., 314). Louisville &c. Ferry Co. *v.* Kentucky (188 U. S., 385). Williams *v.* Parker (188 U. S., 491). Reetz *v.* Michigan (188 U. S., 505). Schaefer *v.* Werling (188 U. S., 516). Kidd *v.* Alabama (188 U. S., 730). Glidden *v.* Harrington (189 U. S., 255). Farmers &c. Ins. Co. *v.* Dobney (189 U. S., 301. Detroit &c. Ry. *v.* Osborn (189 U. S., 383). Knoxville Water Co. *v.* Knoxville (189 U. S., 434). Patterson *v.* Bark Eudora (190 U. S., 169). Howard

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*v.* Fleming (191 U. S., 126). Missouri *v.* Dockery (191 U. S., 165). Atkin *v.* Kansas (191 U. S., 207). Hibben *v.* Smith (191 U. S., 310). Board of Assessors *v.* Comptoir National (191 U. S., 388). Arbuckle *v.* Blackburn (191 U. S., 405). Cronin *v.* Adams (192 U. S., 108). Stanislaus County *v.* San Joaquin C. & I. Co. (192 U. S., 201). Rogers *v.* Alabama (192 U. S., 226). Adams *v.* New York 192 U. S., 585). Cincinnati Street Ry. Co. *v.* Snell (193 U. S., 30). Minn. & St. Louis R. R. Co. *v.* Minnesota (193 U. S., 53). Leigh *v.* Green (193 U. S., 79). Rippey *v.* Texas (193 U. S., 504). Great Southern Hotel Co. *v.* Jones (193 U. S., 532). Newburyport Water Co. *v.* Newburyport (193 U. S., 561). Pope *v.* Williams (193 U. S., 621). West *v.* Louisiana (194 U. S., 258). Missouri, Kansas & Texas Ry. Co. *v.* May (194 U. S., 267). Fischer *v.* St. Louis (194 U. S., 361). Lloyd *v.* Dollison (194 U. S., 445). Shepard *v.* Barron (194 U. S., 553). Field *v.* Barber Asphalt Co. (194 U. S., 618). Bradley *v.* Lightcap (195 U. S., 1). Aikens *v.* Wisconsin (195 U. S., 194). Dobbins *v.* Los Angeles (195 U. S., 223). National Exchange Bank *v.* Wiley (195 U. S., 257). Olsen *v.* Smith (195 U. S., 332). Seattle *v.* Kelleher (195 U. S., 351). Helena &c. Co. *v.* Helena (195 U. S., 383). Cook *v.* Marshall County (196 U. S., 261). Hodge *v.* Muscatine County (196 U. S., 276). Smiley *v.* Kansas (196 U. S., 447). Corry *v.* Baltimore (196 U. S., 466). Coulter *v.* Louisville & Nashville R. R. Co. (196 U. S., 599). Scottish Union & Nat. Ins. Co. *v.* Bowland (196 U. S., 611). Jacobson *v.* Massachusetts (197 U. S., 11). National Cotton Oil Co. *v.* Texas (197 U. S., 115). Dallemagne *v.* Moisan (197 U. S., 169). Dawson *v.* Columbia Trust Co. (197 U. S., 178). L. & N. R. R. Co. *v.* Barber Asphalt Co. (197 U. S., 430). New Orleans Gas Co. *v.* Drainage Commission (197 U. S., 453). Iron Cliffs Co. *v.* Negaunee Iron Co. (197 U. S., 463). Lochner *v.* New York (198 U. S., 45). Delaware, L. &c. R. R. Co. *v.* Pennsylvania (198 U. S., 341). Clark *v.* Nash (198 U. S., 361). Savannah &c. Ry. *v.* Savannah (198 U. S., 392). Cunnius *v.* Reading School District (198 U. S., 458). Ah Sin *v.* Wittman (198 U. S., 500). Metropolitan Street Ry. Co. *v.* New York (199 U. S., 1). Brooklyn City R. R. Co. *v.* New York (199 U. S., 48). Farrell *v.* O'Brien (199 U. S., 89). Union Transit Co. *v.* Kentucky (199 U. S., 194). Marvin *v.* Trout (199 U. S., 212). Kies *v.* Lowrey (199 U. S., 233). Gardner *v.* Michigan (199 U. S., 325). Jack *v.* Kansas (199 U. S., 372). Carroll *v.* Greenwich Ins. Co. (199 U. S., 401). Rogers *v.* Peck (199 U. S., 425). Lieberman *v.* Van De Carr (199 U. S., 552). Minnesota Iron Co. *v.* Kline (199 U. S., 593). Waterworks Co. *v.* Owensboro (200 U. S., 38). Campbell *v.* California (200 U. S., 87). Howard *v.* Kentucky (200 U. S., 164). Armour Packing Co. *v.* Lacy (200 U. S., 226). Carfer *v.* Caldwell (200 U. S., 293). Martin *v.* Texas (200 U. S., 316). Strickley *v.* Highland Boy Mining Co. (200 U. S., 527). C., B. & Q. Railway *v.* Drainage Commissioners (200 U. S., 561). Felts *v.* Murphy (201 U. S., 123). Otis Co. *v.* Ludlow Co. (201 U. S., 140). Michigan Central R. R. *v.* Powers (201 U. S., 245). Soper *v.* Lawrence Brothers (201 U. S., 359). West Chicago R. R. *v.* Chicago (201 U. S., 506). St. John *v.* New York (201 U. S., 633). Rawlins *v.* Georgia (201 U. S., 638). Devine *v.* Los Angeles (202 U. S., 313). Cox *v.* Texas (202 U. S., 446). N. Y. Central R. R. *v.* Miller (202 U. S., 584). Hodgers *v.* U. S. (203 U. S., 1). National Council *v.* State Council 203 U. S., 151). St. Mary's Company *v.* West Virginia (203 U. S., 183). Northwestern Ins. Co. *v.* Riggs (203 U. S., 243). Atlantic Coast Line R. R. Co. et al. *v.* Florida ex rel. Ellis (203 U. S., 256). Martin *v.* Pittsburg & L. E. R. R. Co. (203 U. S., 284). Security Co. *v.* Lexington (203 U. S., 323). Oldfield *v.* N. Y., N. H. & H. R. R. Co. (203 U. S., 372). Fair Haven & W. R. R. Co. *v.* Newhaven (203 U. S., 379). Gatewood *v.* North Carolina (203 U. S., 531). Cahen *v.* Brewster (203 U. S., 543). Board of Education *v.* Illinois (203 U. S., 553). Old Wayne Assn. *v.* McDonough (204 U. S., 8). Bachtel *v.* Wilson (204 U. S., 36). Cleveland R. R. Co. *v.* Cleveland (204 U. S., 116). New York ex rel. Hatch *v.* Reardon (204 U. S., 152). Ballard *v.* Hunter (204 U. S., 241). Bacon *v.* Walker (204 U. S., 311). Western Turf Ass. *v.* Greenbergh (204 U. S., 359). Serra *v.* Mortiga (204 U. S., 470). Chicago, B. & Q. R. R. Co. *v.* Babcock (204 U. S., 585). Coffey *v.* Harlan County (204 U. S., 659). Halter *v.* Nebraska (205 U. S., 34). Wilmington Star Mining Co. *v.* Fulton (205 U. S., 60). Wetmore *v.* Karrick (205 U. S., 141). Tracy *v.* Ginzberg (205 U. S., 170). Urquhart *v.* Brown (205 U. S., 179). Metropolitan Life Ins. Co. *v.* New Orleans (205 U. S., 395). Patterson *v.* Colorado ex rel. Atty. Genl. (205 U. S., 454). Chanler *v.* Kelsey (205 U. S., 466). Atlantic C. L. R. R. Co. *v.* No. Carolina Corp. Com. (206 U. S., 1). Buck *v.* Beach (206 U. S., 392). Bernheimer *v.* Converse (206 U. S., 516). Sauer *v.* New York (206 U. S., 536). Raymond *v.* Chicago Traction Co. (207 U. S., 20). Lee *v.* New Jersey (207 U. S., 67). Seaboard Air Line R. R. Co. *v.* Seegers (207 U. S., 73). Interstate C. S. R. R. Co. *v.* Mass. (207 U. S., 79). Leathe *v.* Thomas (207 U. S., 93). Central of Georgia R. R. Co. *v.* Wright (207 U. S., 127). Hunter *v.* Pittsburg (207 U. S., 161). Shoener *v.* Pennsylvania (207 U. S., 188). Ozan Lumber Co. *v.* Union County Natl. Bank (207 U. S., 251). Polk *v.* Mutual Reserve Fund Ass. (207 U. S., 310). Heath & Milligan Mfg. Co. *v.* Worst (207 U. S., 338). Vandalia R. R. Co. *v.* Indiana ex rel. So. Bend (207 U. S., 359). Consolidating Rendering Co. *v.* Vermont (207 U. S., 541). I. M. Darnell & Son Co. *v.* Memphis (208 U. S., 113). Elder *v.* Wood (208 U. S., 226) Cosmopolitan Club *v.* Virginia (208 U. S., 378). Muller *v.* Oregon (208 U. S., 412) Ughbanks *v.* Armstrong (208 U. S., 481).

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SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

McPherson *v.* Blacker (146 U. S., 1).

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State

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shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Crandall *v.* The State of Nevada (6 Wall., 35). Paul *v.* Virginia (8 Wall., 168). Ward *v.* Maryland (12 Wall., 418). Slaughterhouse Cases (16 Wall., 36). Bradwell *v.* The State (16 Wall., 130). Bartemeyer *v.* Iowa (18 Wall., 129). Minor *v.* Happersett (21 Wall., 162). Walker *v.* Sauvinet (92 U. S., 90). Kennard *v.* Louisiana, ex rel. Morgan (92 U. S., 480). United States *v.* Cruikshank (92 U. S., 542). Munn *v.* Illinois (94 U. S., 113).

## ARTICLE XV.*

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

Twining *v.* New Jersey (211 U. S., 78). New York, ex rel. Silz, *v.* Hesterberg (211 U. S., 31).

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

United States *v.* Reese et al. (92 U. S., 214). United States *v.* Cruikshank et al. (92 U. S., 542). Neal *v.* Delaware (103 U. S., 370). Ex parte Yarborough (110 U. S., 651). Waddell et al. (112 U. S., 76). McPherson *v.* Blacker (146 U. S., 1). James *v.* Bowman (190 U. S., 127). Hodges *v.* United States (203 U. S., 1).

* The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9–12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13–14, 1869; New York, March 17–April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15–17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18–19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18,1870. The State of Georgia also ratified the amendment February 2, 1870.

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# INDEX TO THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS THERETO.

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| *Attainder* or *ex post facto* law shall be passed. No bill of | 1 | 9 | 3 |
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B.

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| *Bills* for raising revenue shall originate in the House of Representatives. All | 1 | 7 | 1 |
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| If he approve, he shall sign them; if he disapprove, he shall return them, with his objections, to that House in which they originated. | 1 | 7 | 2 |
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| Upon the reconsideration of a bill returned by the President, the question shall be taken by yeas and nays | 1 | 7 | 2 |
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C.

| | | | |
|---|---|---|---|
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| *Capitation* or other direct tax shall be laid unless in proportion to the census or enumeration. No | 1 | 9 | 4 |
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| *Casting vote*. The Vice President shall have no vote unless the Senate be equally divided | 1 | 3 | 4 |
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| *Census* or enumeration. No capitation or other direct tax shall be laid except in proportion to the | 1 | 9 | 4 |
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| *Citizen* of the United States at the adoption of the Constitution shall be eligible to the office of President. No person not a natural born... | 2 | 1 | 4 |
| *Citizen* of the United States. No person shall be a Senator who shall not have attained the age of thirty years and been nine years a..... | 1 | 3 | 3 |
| No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a..... | 1 | 2 | 2 |
| *Citizenship*. Citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States..... | 4 | 2 | 1 |
| All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]..... | 14 | 1 | |
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| *Coin* a tender in payment of debts. No State shall make anything but gold and silver..... | 1 | 10 | 1 |
| *Coin* money and regulate the value thereof and of foreign coin. Congress shall have power to..... | 1 | 8 | 5 |
| *Coin* of the United States. Congress shall provide for punishing the counterfeiting of securities and current..... | 1 | 8 | 6 |
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| *Confederation.* All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under it as under the | 6 | | 1 |
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| *Congress* of the United States. All legislative powers shall be vested in a | 1 | 1 | |
| Shall consist of a Senate and House of Representatives | 1 | 1 | |
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| May at any time alter regulations for elections of Senators and Representatives, except as to the places of choosing Senators | 1 | 4 | 1 |
| Each House shall be the judge of the elections, returns, and qualifications of its own members | 1 | 5 | 1 |
| A majority of each House shall constitute a quorum to do business | 1 | 5 | 1 |
| A smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members | 1 | 5 | 1 |
| Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member | 1 | 5 | 2 |
| Each House shall keep a journal of its proceedings | 1 | 5 | 3 |
| Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days | 1 | 5 | 4 |
| Senators and Representatives shall receive a compensation to be ascertained by law | 1 | 6 | 1 |
| They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at their respective Houses, and in going to and returning from the same | 1 | 6 | 1 |
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| To punish the counterfeiting the securities and current coin of the United States | 1 | 8 | 6 |
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| To make rules for the government of the Army and Navy | 1 | 8 | 14 |
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| To provide for organizing, arming, and equipping the militia | 1 | 8 | 16 |
| To exercise exclusive legislation over the District fixed for the seat of government, and over forts, magazines, arsenals, and dockyards | 1 | 8 | 17 |
| To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the Government of the United States | 1 | 8 | 18 |
| No person holding any office under the United States shall accept of any present, emolument, office, or title of any kind from any foreign State, without the consent of | 1 | 9 | 8 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Congress* may determine the time of choosing the electors for President and Vice President and the day on which they shall give their votes | 2 | 1 | 3 |
| The President may, on extraordinary occasions, convene either House of | 2 | 3 | |
| The manner in which the acts, records, and judicial proceedings of the States shall be proved shall be prescribed by | 4 | 1 | |
| New States may be admitted by, into this Union | 4 | 3 | 1 |
| Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States | 4 | 3 | 2 |
| Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both Houses of | 5 | | |
| Persons engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in. [Amendments] | 14 | 3 | |
| But such disqualifications may be removed by a vote of two-thirds of both Houses of. [Amendments] | 14 | 3 | |
| Shall have power to enforce, by appropriate legislation, the thirteenth amendment. [Amendments] | 13 | 2 | |
| Shall have power to enforce, by appropriate legislation, the fourteenth amendment. [Amendments] | 14 | 5 | |
| Shall have power to enforce, by appropriate legislation, the fifteenth amendment. [Amendments] | 15 | 2 | |
| *Consent.* No State shall be deprived of its equal suffrage in the Senate without its | 5 | | |
| *Consent of Congress.* No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the | 1 | 9 | 8 |
| No State shall lay any imposts or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the | 1 | 10 | 2 |
| No State shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the | 1 | 10 | 3 |
| No State shall enter into any agreement or compact with another State, or with a foreign power, without the | 1 | 10 | 3 |
| No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the | 1 | 10 | 3 |
| No new State shall be formed or erected within the jurisdiction of any other State, or any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the | 4 | 3 | 1 |
| *Consent* of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings with the | 1 | 8 | 17 |
| *Consent* of the legislatures of the States and of Congress. No State shall be formed by the junction of two or more States or parts of States without the | 4 | 3 | 1 |
| *Consent of the other.* Neither House, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the | 1 | 5 | 4 |
| *Consent of the owner.* No soldier shall be quartered in time of peace in any house without the. [Amendments] | 3 | | |
| *Consent of the Senate.* The President shall have power to make treaties, by and with the advice and | 2 | 2 | 2 |
| The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law and not otherwise herein provided for, by and with the advice and | 2 | 2 | 2 |
| *Constitution*, in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by | 1 | 8 | 18 |
| *Constitution*, shall be eligible to the office of President. No person, except a natural-born citizen, or a citizen at the time of the adoption of the | 2 | 1 | 4 |
| *Constitution.* The President, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the | 2 | 1 | 7 |
| *Constitution*, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the | 3 | 2 | 1 |
| *Constitution* shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the | 4 | 3 | 2 |
| *Constitution.* The manner in which amendments to, may be proposed and ratified | 5 | | |
| *Constitution* shall be as valid under it as under the Confederation. All debts and engagements contracted before the adoption of the | 6 | | 1 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Constitution* and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The | 6 | | 2 |
| The judges in every State, anything in the constitution or laws of a State to the contrary notwithstanding, shall be bound thereby | 6 | | 2 |
| *Constitution*. All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the | 6 | | 3 |
| But no religious test shall ever be required as a qualification for any office of public trust | 6 | | 3 |
| *Constitution*, between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establishment of the | 7 | | |
| *Constitution* of certain rights shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments] | 9 | | |
| *Constitution*, nor prohibited by it to the States, are reserved to the States respectively or to the people. Powers not delegated to the United States by the. [Amendments] | 10 | | |
| *Constitution*, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain classes of persons who took an oath to support the. [Amendments] | 14 | 3 | |
| *Constitution*. Done in convention by the unanimous consent of the States present, September 17, 1787 | | | |
| *Contracts*. No State shall pass any *ex post facto* law, or law impairing the obligation of | 1 | 10 | 1 |
| *Controversies* to which the United States shall be a party; between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; between a State or its citizens and foreign States, citizens, or subjects. The judicial power shall extend to | 3 | 2 | 1 |
| *Convene Congress* or either House, on extraordinary occasions. The President may | 2 | 3 | |
| *Convention* for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a | 5 | | |
| *Convention*, by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in | 7 | | |
| *Conventions* of nine States shall be sufficient for the establishment of the Constitution. The ratification of the | 7 | | |
| *Conviction* in cases of impeachment shall not be had without the concurrence of two-thirds of the members present | 1 | 3 | 6 |
| *Copyrights* to authors for limited times. Congress shall have power to provide for | 1 | 8 | 8 |
| *Corruption of blood*. Attainder of treason shall not work | 3 | 3 | 2 |
| *Counsel* for his defense. In all criminal prosecutions the accused shall have the assistance of. [Amendments] | 6 | | |
| *Counterfeiting* the securities and current coin of the United States. Congress shall provide for the punishment of | 1 | 8 | 6 |
| *Courts*. Congress shall have power to constitute tribunals inferior to the Supreme Court | 1 | 8 | 9 |
| *Courts of law*. Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the heads of departments, or in the | 2 | 2 | 2 |
| *Courts* as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such inferior | 3 | 1 | |
| *Courts*. The judges of the Supreme and inferior courts shall hold their offices during good behavior | 3 | 1 | |
| Their compensation shall not be diminished during their continuance in office | 3 | 1 | |
| *Credit*. No State shall emit bills of | 1 | 10 | 1 |
| *Credit* of the United States. Congress shall have power to borrow money on the | 1 | 8 | 2 |
| *Credit* shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and | 4 | 1 | |
| *Crime*, unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments] | 5 | | |
| Except in cases in the military and naval forces, or in the militia, when in actual service. [Amendments] | 5 | | |
| *Crimes and misdemeanors*. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other | 2 | 4 | |
| *Crimes*, except in cases of impeachment, shall be tried by jury. All | 3 | 2 | 3 |
| They shall be tried in the State within which they may be committed. | 3 | 2 | 3 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Crimes*, when not committed in a State, they shall be tried at the places which Congress may by law have provided | 3 | 2 | 3 |
| *Criminal prosecutions*, the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all. [Amendments] | 6 | | |
| He shall be informed of the nature and cause of the accusations. [Amendments] | 6 | | |
| He shall be confronted with the witnesses against him. [Amendments] | 6 | | |
| He shall have compulsory process for obtaining witnesses in his favor. [Amendments] | 6 | | |
| He shall have the assistance of counsel in his defense. [Amendments] | 6 | | |
| *Criminate himself*. No person as a witness shall be compelled to. [Amendments] | 5 | | |
| *Cruel and unusual punishments* inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments] | 8 | | |

D.

| | | | |
|---|---|---|---|
| *Danger* as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded or in such imminent | 1 | 10 | 3 |
| *Day* on which they shall vote for President and Vice President, which shall be the same throughout the United States. Congress may determine the time of choosing the electors and the | 2 | 1 | 3 |
| *Day to day*, and may be authorized to compel the attendance of absent Members. A smaller number than a quorum of each House may adjourn from | 1 | 5 | 1 |
| *Death*, resignation, or inability of the President, the powers and duties of his office shall devolve on the Vice President. In case of the | 2 | 1 | 5 |
| *Death*, resignation, or inability of the President. Congress may provide by law for the case of the removal | 2 | 1 | 5 |
| *Debt* of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments] | 14 | 4 | |
| *Debts*. No State shall make anything but gold and silver coin a tender in payment of | 1 | 10 | 1 |
| *Debts* and provide for the common defense and general welfare of the United States. Congress shall have power to pay the | 1 | 8 | 1 |
| *Debts* and engagements contracted before the adoption of this Constitution shall be as valid against the United States under it as under the Confederation | 6 | | 1 |
| *Debts* or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any. [Amendments] | 14 | 4 | |
| *Declare war*, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to | 1 | 8 | 11 |
| *Defense*, promote the general welfare, etc. To insure the common. [Preamble] | | | |
| *Defense* and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common | 1 | 8 | 1 |
| *Defense*. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments] | 6 | | |
| *Delaware* entitled to one Representative in the First Congress | 1 | 2 | 3 |
| *Delay*. No State shall, without the consent of Congress, engage in war unless actually invaded or in such imminent danger as will not admit of | 1 | 10 | 3 |
| *Delegated* to the United States, nor prohibited to the States, are reserved to the States or to the people. The powers not. [Amendments] | 10 | | |
| *Deny or disparage* others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments] | 9 | | |
| *Departments* upon any subject relating to their duties. The President may require the written opinion of the principal officers in each of the executive | 2 | 2 | 1 |
| *Departments*. Congress may by law vest the appointment of inferior officers in the heads of | 2 | 2 | 2 |
| *Direct tax* shall be laid unless in proportion to the census or enumeration. No capitation or other | 1 | 9 | 4 |
| *Direct taxes* and Representatives, how apportioned among the several States. [Repealed by the second section of the fourteenth amendment, on page 227] | 1 | 2 | 3 |
| *Disability* of the President and Vice President. Provisions in case of the. | 2 | 1 | 5 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Disability.* No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States or any State, who having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, to support the Constitution, afterwards engaged in insurrection or rebellion against the United States. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such. [Amendments] | 14 | 3 | |
| *Disagreement* between the two Houses as to the time of adjournment, the President may adjourn them to such time as he may think proper. In case of | 2 | 3 | |
| *Disorderly behavior.* Each House may punish its Members for | 1 | 5 | 2 |
| And with the concurrence of two-thirds expel a Member for | 1 | 5 | 2 |
| *Disparage* others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments] | 9 | | |
| *Disqualification.* No Senator or Representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term | 1 | 6 | 2 |
| No person holding any office under the United States shall be a Member of either House during his continuance in office | 1 | 6 | 2 |
| No person shall be a Member of either House, presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterwards engaged in insurrection or rebellion. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments] | 14 | 3 | |
| *District of Columbia.* Congress shall exercise exclusive legislation in all cases over the | 1 | 8 | 17 |
| *Dockyards.* Congress shall have exclusive authority over all places purchased for the erection of | 1 | 8 | 17 |
| *Domestic tranquillity*, provide for the common defense, etc. To insure. [Preamble] | | | |
| *Domestic violence.* The United States shall protect each State against invasion and | 4 | 4 | |
| *Due process of law.* No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments] | 5 | | |
| No State shall deprive any person of life, liberty, or property without. [Amendments] | 14 | 1 | |
| *Duties and powers* of the office of President, in case of his death, removal, or inability to act, shall devolve on the Vice President | 2 | 1 | 5 |
| In case of the disability of the President and Vice President, Congress shall declare what officer shall act | 2 | 1 | 5 |
| *Duties*, imposts, and excises. Congress shall have power to lay and collect taxes | 1 | 8 | 1 |
| Shall be uniform throughout the United States | 1 | 8 | 1 |
| *Duties* shall be laid on articles exported from any State. No tax or | 1 | 9 | 5 |
| *Duties* in another State. Vessels clearing in the ports of one State shall not be obliged to pay | 1 | 9 | 6 |
| On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No State shall lay any. | 1 | 10 | 2 |
| *Duties* on imports or exports. The net produce of all such duties shall be for the use of the Treasury of the United States | 1 | 10 | 2 |
| All laws laying such duties shall be subject to the revision and control of Congress | 1 | 10 | 2 |
| *Duty of tonnage* without the consent of Congress. No State shall lay any. | 1 | 10 | 3 |

E.

| | | | |
|---|---|---|---|
| *Election* of President and Vice President. Congress may determine the day for the | 2 | 1 | 3 |
| Shall be the same throughout the United States. The day of the | 2 | 1 | 3 |
| *Elections* for Senators and Representatives. The legislatures of the States shall prescribe the time, places, and manner of holding | 1 | 4 | 1 |
| But Congress may, at any time, alter such regulations, except as to the places of choosing Senators | 1 | 4 | 1 |
| *Elections* for Senators and Representatives. Returns and qualifications of its own Members. Each House shall be judge of the | 1 | 5 | 1 |
| *Electors* for Members of the House of Representatives. Qualifications of. | 1 | 2 | 1 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Electors* for President and Vice President. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress | 2 | 1 | 2 |
| But no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector | 2 | 1 | 2 |
| Congress may determine the time of choosing the electors and the day on which they shall give their votes | 2 | 1 | 3 |
| Which day shall be the same throughout the United States | 2 | 1 | 3 |
| The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments] | 12 | | |
| *Electors* shall name, in their ballots, the person voted for as President; and in distinct ballots the person voted for as Vice President. [Amendments] | 12 | | |
| They shall make distinct lists of the persons voted for as President and of persons voted for as Vice President, which they shall sign and certify, and transmit sealed to the seat of government, directed to the President of the Senate. [Amendments] | 12 | | |
| No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments] | 14 | 3 | |
| *Emancipation* of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments] | 14 | 4 | |
| *Emit bills of credit*. No State shall | 1 | 10 | 1 |
| *Emolument* of any kind from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept any | 1 | 9 | 8 |
| *Enemies*. Treason shall consist of levying war against the United States, in adhering to, or giving aid and comfort to their | 3 | 3 | 1 |
| *Engagements* contracted before the adoption of this Constitution shall be valid. All debts and | 6 | | 1 |
| *Enumeration* of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter | 1 | 2 | 3 |
| Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made | 1 | 2 | 3 |
| *Enumeration* in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments] | 9 | | |
| *Equal protection* of the laws. No State shall deny to any person within its jurisdiction the. [Amendments] | 14 | 1 | |
| *Equal suffrage* in the Senate. No State shall be deprived without its consent of its | 5 | | |
| *Establishment* of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the | 7 | | |
| *Excessive bail* shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments] | 8 | | |
| *Excises*. Congress shall have power to lay and collect taxes, duties, imposts, and | 1 | 8 | 1 |
| Shall be uniform throughout the United States. All duties, imposts, and | 1 | 8 | 1 |
| *Exclusive legislation*, in all cases, over such district as may become the seat of government. Congress shall exercise | 1 | 8 | 17 |
| *Exclusive legislation* over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise | 1 | 8 | 17 |
| *Executive of a State*. The United States shall protect each State against invasion and domestic violence on the application of the legislature or the | 4 | 4 | |
| *Executive and judicial officers* of the United States and of the several States shall be bound by an oath to support the Constitution | 6 | | 3 |
| *Executive departments*. On subjects relating to their duties the President may require the written opinions of the principal officers in each of the | 2 | 2 | 1 |
| Congress my by law vest the appointment of inferior officers in the heads of | 2 | 2 | 2 |
| *Executive power* shall be vested in a President of the United States of America. The | 2 | 1 | 1 |
| *Expel a Member*. Each House, with the concurrence of two-thirds, may | 1 | 5 | 2 |
| *Expenditures* of public money shall be published from time to time. A regular statement of the receipts and | 1 | 9 | 7 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Exportations* from any State. No tax or duty shall be laid on | 1 | 9 | 5 |
| *Exports or imports*, except upon certain conditions. No State shall, without the consent of Congress, lay any duties on | 1 | 10 | 2 |
| Laid by any State shall be for the use of the Treasury. The net produce of all duties on | 1 | 10 | 2 |
| Shall be subject to the revision and control of Congress. All laws of the States laying duties on | 1 | 10 | 2 |
| *Ex post facto* law shall be passed. No bill of attainder or | 1 | 9 | 3 |
| *Ex post facto* law, or law requiring the obligation of contracts. No State shall pass any bill of attainder | 1 | 10 | 1 |
| *Extraordinary occasions*. The President may convene both Houses or either of them | 2 | 3 | |

F.

| | | | |
|---|---|---|---|
| *Faith* and credit in each State shall be given to the acts, records, and judicial proceedings of another State. Full | 4 | 1 | |
| *Felony*, and breach of the peace. Members of Congress shall not be privileged from arrest for treason | 1 | 6 | 1 |
| *Felonies* committed on the high seas. Congress shall have power to define and punish piracies and | 1 | 8 | 10 |
| *Fines*. Excessive fines shall not be imposed. [Amendments] | 8 | | |
| *Foreign coin*. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of | 1 | 8 | 5 |
| *Foreign nations* among the States and with the Indian tribes. Congress shall have power to regulate commerce with | 1 | 8 | 3 |
| *Foreign power*. No State shall, without the consent of Congress, enter into any compact or agreement with any | 1 | 10 | 3 |
| *Forfeiture* except during the life of the person attainted. Attainder of treason shall not work | 3 | 3 | 2 |
| *Formation* of new States. Provisions relating to the | 4 | 3 | 1 |
| *Form of government*. The United States shall guarantee to every State in this Union a republican | 4 | 4 | |
| And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature can not be convened) against domestic violence | 4 | 4 | |
| *Forts*, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of | 1 | 8 | 17 |
| *Freedom* of speech or the press. Congress shall make no law abridging the. [Amendments] | 1 | | |
| *Free State*, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments] | 2 | | |
| *Fugitives* from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee | 4 | 2 | 2 |
| *Fugitives* from service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due | 4 | 2 | 3 |

G.

| | | | |
|---|---|---|---|
| *General welfare* and secure the blessings of liberty, etc. To promote the. [Preamble.] | | | |
| *General welfare*. Congress shall have power to provide for the common defense and | 1 | 8 | 1 |
| *Georgia* shall be entitled to three Representatives in the First Congress | 1 | 2 | 3 |
| *Gold and silver* coin a tender in payments of debts. No State shall make anything but | 1 | 10 | 1 |
| *Good behavior*. The judges of the Supreme and inferior courts shall hold their offices during | 3 | 1 | |
| *Government*. The United States shall guarantee to every State in this Union a republican form of | 4 | 4 | |
| And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature can not be convened) against domestic violence | 4 | 4 | |
| *Grang jury*. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments] | 5 | | |
| Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments] | 5 | | |
| *Guarantee* to every State in this Union a republican form of government. The United States shall | 4 | 4 | |
| *Guarantee*. And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature can not be convened) against, domestic violence | 4 | 4 | |


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## H.


| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Habeas corpus* shall not be suspended unless in cases of rebellion or invasion. The writ of | 1 | 9 | 2 |
| *Heads of departments.* Congress may by law vest the appointment of inferior officers in the | 2 | 2 | 2 |
| On any subject relating to their duties, the President may require the written opinion of the principal officers in each of the executive departments | 2 | 2 | 1 |
| *High crimes and misdemeanors.* The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other | 2 | 4 | |
| *House of Representatives.* Congress shall consist of a Senate and | 1 | 1 | |
| Shall be composed of Members chosen every second year | 1 | 2 | 1 |
| Qualifications of electors for Members of the | 1 | 2 | 1 |
| No person shall be a Member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States | 1 | 2 | 2 |
| The executives of the several States shall issue writs of election to fill vacancies in the | 1 | 2 | 4 |
| Shall choose their Speaker and other officers | 1 | 2 | 5 |
| Shall have the sole power of impeachment | 1 | 2 | 5 |
| Shall be the judge of the elections, returns, and qualifications of its own Members | 1 | 5 | 1 |
| A majority shall constitute a quorum to do business | 1 | 5 | 1 |
| Less than a majority may adjourn from day to day, and compel the attendance of absent Members | 1 | 5 | 1 |
| May determine its own rules of proceedings | 1 | 5 | 2 |
| May punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member | 1 | 5 | 2 |
| Shall keep a journal of its proceedings | 1 | 5 | 3 |
| Shall not adjourn for more than three days during the session of Congress without the consent of the Senate | 1 | 5 | 4 |
| For any speech or debate in either House, Members shall not be questioned in any other place | 1 | 6 | 1 |
| No person holding any office under the United States shall, while holding such office, be a Member of the | 1 | 6 | 2 |
| No Member shall, during the time for which he was elected, be appointed to an office which shall have been created or the emoluments increased during his membership | 1 | 6 | 2 |
| All bills for raising revenue shall originate in the | 1 | 7 | 1 |
| The votes for President and Vice President shall be counted in the presence of the Senate and. [Amendments] | 12 | | |
| If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a President. [Amendments] | 12 | | |
| They shall vote by States, each State counting one vote. [Amendments] | 12 | | |
| A quorum shall consist of a Member or Members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a President. [Amendments] | 12 | | |
| No person having as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a Member of the. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments] | 14 | 3 | |


## I.


| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Imminent danger* as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded or in such | 1 | 10 | 3 |
| *Immunities.* Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same | 1 | 6 | 1 |
| No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments] | 3 | | |
| No person shall be twice put in jeopardy of life or limb for the same offense. [Amendments] | 5 | | |
| All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments] | 14 | 1 | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Immunities.* No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments] | 14 | 1 | |
| Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments] | 14 | 1 | |
| Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments] | 14 | 1 | |
| *Impeachment.* The President may grant reprieves and pardons except in cases of | 2 | 2 | 1 |
| The House of Representatives shall have the sole power of | 1 | 2 | 5 |
| The trial of all crimes shall be by jury, except in cases of | 3 | 2 | 3 |
| *Impeachment* for and conviction of treason, bribery, and other high crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed upon | 2 | 4 | |
| *Impeachments.* The Senate shall have sole power to try all | 1 | 3 | 6 |
| The Senate shall be on oath or affirmation when sitting for the trial of | 1 | 3 | 6 |
| When the President of the United States is tried the Chief Justice shall preside | 1 | 3 | 6 |
| No person shall be convicted without the concurrence of two-thirds of the Members present | 1 | 3 | 6 |
| Judgment shall not extend beyond removal from office and disqualification to hold office | 1 | 3 | 7 |
| But the party convicted shall be liable to indictment and punishment according to law | 1 | 3 | 7 |
| *Importation* of slaves prior to 1808 shall not be prohibited by the Congress | 1 | 9 | 1 |
| But a tax or duty of ten dollars for each person may be imposed on such | 1 | 9 | 1 |
| *Imports or exports* except what may be absolutely necessary for executing its inspection laws. No State shall, without the consent of Congress, lay any imposts or duties on | 1 | 10 | 2 |
| *Imports or exports* laid by any State shall be for the use of the Treasury. The net produce of all duties on | 1 | 10 | 2 |
| *Imports or exports* shall be subject to the revision and control of Congress. All laws of States laying duties on | 1 | 10 | 2 |
| *Imposts and excises.* Congress shall have power to lay and collect taxes, duties | 1 | 8 | 1 |
| Shall be uniform throughout the United States. All taxes, duties | 1 | 8 | 1 |
| *Inability* of the President, the powers and duties of his office shall devolve on the Vice President. In case of the death, resignation, or | 2 | 1 | 5 |
| *Inability* of the President or Vice President. Congress may provide by law for the case of the removal, death, resignation, or | 2 | 1 | 5 |
| *Indian tribes.* Congress shall have power to regulate commerce with the | 1 | 8 | 3 |
| *Indictment* or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments] | 5 | | |
| Except in cases arising in the land or naval forces or in the militia when in actual service. [Amendments] | 5 | | |
| *Indictment,* trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to | 1 | 3 | 7 |
| *Infamous crime* unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments] | 5 | | |
| *Inferior courts.* Congress shall have power to constitute tribunals inferior to the Supreme Court | 1 | 8 | 9 |
| *Inferior courts* as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such | 3 | 1 | |
| The judges of both the Supreme and inferior courts shall hold their offices during good behavior | 3 | 1 | |
| Their compensation shall not be diminished during their continuance in office | 3 | 1 | |
| *Inferior officers* in the courts of law, in the President alone, or in the heads of departments. Congress, if they think proper, may by law vest the appointment of | 2 | 2 | 2 |
| *Inhabitant of the State* for which he shall be chosen. No person shall be a Senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an | 1 | 3 | 3 |
| *Insurrection or rebellion* against the United States. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disabilities. [Amendments] | 14 | 3 | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Insurrection or rebellion against the United States.* Debts declared illegal and void which were contracted in aid of. [Amendments] | 14 | 4 | |
| *Insurrections* and repel invasions. Congress shall provide for calling forth the militia to suppress | 1 | 8 | 15 |
| *Invasion.* No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay | 1 | 10 | 3 |
| The writ of habeas corpus shall not be suspended unless in case of rebellion or | 1 | 9 | 2 |
| *Invasion* and domestic violence. The United States shall protect each State against | 4 | 4 | |
| *Invasions.* Congress shall provide for calling forth the militia to suppress insurrections and repel | 1 | 8 | 15 |
| *Inventors and authors* in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to | 1 | 8 | 8 |
| *Involuntary servitude*, except as a punishment for crime, abolished in the United States. Slavery and. [Amendments] | 13 | 1 | |

J.

| | | | |
|---|---|---|---|
| *Jeopardy* of life or limb for the same offense. No person shall be twice put in. [Amendments] | 5 | | |
| *Journal* of its proceedings. Each House shall keep a | 1 | 5 | 3 |
| *Judges* in every State shall be bound by the Constitution, the laws made in pursuance thereof, and treaties of the United States, which shall be the supreme law of the land | 6 | | 2 |
| *Judges* of the Supreme and inferior courts shall hold their offices during good behavior | 3 | 1 | |
| Their compensation shall not be diminshed during their continuance in office | 3 | 1 | |
| *Judgment* in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the United States | 1 | 3 | 7 |
| But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law | 1 | 3 | 7 |
| *Judicial power of the United States.* Congress shall have power to constitute tribunals inferior to the Supreme Court | 1 | 8 | 9 |
| The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish | 3 | 1 | |
| The judges of the Supreme and inferior courts shall hold their offices during good behavior | 3 | 1 | |
| Their compensation shall not be diminished during their continuance in office | 3 | 1 | |
| It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States | 3 | 2 | 1 |
| To all cases affecting ambassadors, other public ministers, and consuls | 3 | 2 | 1 |
| To all cases of admiralty and maritime jurisdiction | 3 | 2 | 1 |
| To controversies to which the United States shall be a party | 3 | 2 | 1 |
| To controversies between two or more States | 3 | 2 | 1 |
| To controversies between a State and citizens of another State | 3 | 2 | 1 |
| To controversies between citizens of different States | 3 | 2 | 1 |
| To citizens of the same State claiming lands under grants of different States | 3 | 2 | 1 |
| To controversies between a State or its citizens and foreign States, citizens, or subjects | 3 | 2 | 1 |
| In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction | 3 | 2 | 2 |
| In all other cases before mentioned it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make | 3 | 2 | 2 |
| The trial of all crimes, except in cases of impeachment, shall be by jury | 3 | 2 | 3 |
| The trial shall be held in the State where the crimes shall have been committed | 3 | 2 | 3 |
| But when not committed in a State, the trial shall be at such place or places as Congress may by law have directed | 3 | 2 | 3 |
| The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. [Amendments] | 11 | | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Judicial proceedings* of every other State. Full faith and credit shall be given in each State to the acts, records, and | 4 | 1 | |
| Congress shall prescribe the manner of proving such acts, records, and proceedings | 4 | 1 | |
| *Judicial* and executive officers of the United States and of the several States shall be bound by an oath to support the Constitution | 6 | | 3 |
| *Judiciary.* The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party | 3 | 2 | 2 |
| The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make | 3 | 2 | 2 |
| *Junction* of two or more States or parts of States without the consent of the legislatures and of Congress. No State shall be formed by the | 4 | 3 | 1 |
| *Jurisdiction* of another State. No new State shall be formed or erected within the | 4 | 3 | 1 |
| *Jurisdiction*, both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate | 3 | 2 | 2 |
| *Jurisdiction.* In all cases affecting ambassadors, and other public ministers and consuls, and in cases where a State is a party, the Supreme Court shall have original | 3 | 2 | 2 |
| *Jury.* The trial of all crimes, except in cases of impeachment, shall be by | 3 | 2 | 3 |
| In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments] | 6 | | |
| All suits at common law, where the value exceeds twenty dollars, shall be tried by. [Amendments] | 7 | | |
| Where a fact has been tried by a jury, it shall not be reexamined except by the rules of the common law. [Amendments] | 7 | | |
| *Just compensation.* Private property shall not be taken for public use without. [Amendments] | 5 | | |
| *Justice*, insure domestic tranquillity, etc. To establish. [Preamble] | | | |


L.


| | | | |
|---|---|---|---|
| *Labor*, in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or | 4 | 2 | 3 |
| *Land* and naval forces. Congress shall make rules for the government and regulation of the | 1 | 8 | 14 |
| *Law* and fact, with exceptions and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to | 3 | 2 | 2 |
| *Law* of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States shall be the supreme | 6 | | 2 |
| The judges in every State shall be bound thereby | 6 | | 2 |
| *Law* of nations. Congress shall provide for punishing offenses against the | 1 | 8 | 10 |
| *Laws.* Congress shall have power to provide for calling forth the militia to suppress insurrection, repel invasions, and to execute the | 1 | 8 | 15 |
| *Laws and treaties* of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution or the | 3 | 2 | 1 |
| *Laws* necessary to carry into execution the powers vested in the Government, or in any department or officer of the United States. Congress shall have power to make all | 1 | 8 | 18 |
| *Legal tender* in payment of debts. No State shall make anything but gold and silver coin a | 1 | 10 | 1 |
| *Legislation* in all cases over such district as may become the seat of government. Congress shall have power to exercise exclusive | 1 | 8 | 17 |
| Over all places purchased by consent of the legislatures in the different States for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall have power to exercise exclusive | 1 | 8 | 17 |
| *Legislation.* Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof | 1 | 8 | 18 |
| Congress shall have power to enforce the thirteenth amendment by appropriate. [Amendments] | 13 | 2 | |
| Congress shall have power to enforce the fourteenth amendment by appropriate. [Amendments] | 14 | 5 | |
| Congress shall have power to enforce the fifteenth amendment by appropriate. [Amendments] | 15 | 2 | |
| *Legislative* powers herein granted shall be vested in a Congress; all | 1 | 1 | |
| *Legislature or the executive* (when the legislature can not be convened). The United States shall protect each State against invasion; and against domestic violence on the application of the | 4 | 4 | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Legislatures* of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the application of the | 5 | | |
| *Letters* of marque and reprisal. Congress shall have power to grant | 1 | 8 | 11 |
| No State shall grant | 1 | 10 | 1 |
| *Liberty* to ourselves and our posterity, etc. To secure the blessings of. [Preamble] | | | |
| *Life, liberty, and property* without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of. [Amendments] | 5 | | |
| No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of. [Amendments] | 14 | 1 | |
| *Life* or limb for the same offense. No person shall be twice put in jeopardy of. [Amendments] | 5 | | |
| *Loss* or emancipation of any slave shall be held illegal and void. Claims for the. [Amendments] | 14 | 4 | |

M.

| | | | |
|---|---|---|---|
| *Magazines*, arsenals, dockyards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of | 1 | 8 | 17 |
| *Majority* of each House shall constitute a quorum to do business. A | 1 | 5 | 1 |
| But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent Members | 1 | 5 | 1 |
| *Majority* of all the States shall be necessary to a choice | 1 | 5 | 1 |
| When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a Member or Members from two-thirds of the States; but a. [Amendments] | 12 | | |
| When the choice of a Vice President shall devolve on the Senate, a quorum shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. [Amendments] | 12 | | |
| *Maritime jurisdiction*. The judicial power shall extend to all cases of admiralty and | 3 | 2 | 1 |
| *Marque* and reprisal. Congress shall have power to grant letters of | 1 | 8 | 11 |
| No State shall grant any letters of | 1 | 10 | 1 |
| *Maryland* entitled to six Representatives in the First Congress | 1 | 2 | 3 |
| *Massachusetts* entitled to eight Representatives in the First Congress | 1 | 2 | 3 |
| *Measures*. Congress shall fix the standard of weights and | 1 | 8 | 5 |
| *Meeting of Congress*. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day | 1 | 4 | 2 |
| *Members* of Congress and of State legislatures shall be bound by oath or affirmation to support the Constitution | 6 | | 3 |
| *Militia* to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the | 1 | 8 | 15 |
| Congress shall provide for organizing, arming, and disciplining the | 1 | 8 | 16 |
| Congress shall provide for governing such part of them as may be employed by the United States | 1 | 8 | 16 |
| Reserving to the States the appointment of the officers and the right to train the militia according to the discipline prescribed by Congress | 1 | 8 | 16 |
| A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments] | 2 | | |
| *Misdemeanors*. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and | 2 | 4 | |
| *Money* on the credit of the United States. Congress shall have power to borrow | 1 | 8 | 2 |
| Regulate the value thereof and of foreign coin. Congress shall have power to coin | 1 | 8 | 5 |
| Shall be drawn from the Treasury but in consequence of appropriations made by law. No | 1 | 9 | 7 |
| Shall be published from time to time. A regular statement and account of receipts and expenditures of public | 1 | 9 | 7 |
| For raising and supoprting armies. No appropriation of money shall be for a longer term than two years | 1 | 8 | 12 |

N.

| | | | |
|---|---|---|---|
| *Nations*. Congress shall have power to regulate commerce with foreign | 1 | 8 | 3 |
| Congress shall provide for punishing offenses against the law of | 1 | 8 | 10 |
| *Natural-born citizen*, or a citizen at the adoption of the Constitution, shall be eligible to the office of President. No person except a | 2 | 1 | 4 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Naturalization*. Congress shall have power to establish a uniform rule of.. | 1 | 8 | 4 |
| *Naturalized* in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the State in which they reside. All persons born or. [Amendments] | 14 | 1 | |
| *Naval forces*. Congress shall make rules and regulations for the government and regulation of the land and | 1 | 8 | 14 |
| *Navy*. Congress shall have power to provide and maintain a | 1 | 8 | 13 |
| *New Hampshire* entitled to three Representatives in the First Congress... | 1 | 2 | 3 |
| *New Jersey* entitled to four Representatives in the First Congress | 1 | 2 | 3 |
| *New States* may be admitted by Congress into this Union | 4 | 3 | 1 |
| But no new State shall be formed within the jurisdiction of another State | 4 | 3 | 1 |
| Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of Congress | 4 | 3 | 1 |
| *New York* entitled to six Representatives in the First Congress | 1 | 2 | 3 |
| *Nobility* shall be granted by the United States. No title of | 1 | 9 | 8 |
| No State shall grant any title of | 1 | 10 | 1 |
| *Nominations for office* by the President. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers | 2 | 2 | 2 |
| He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session... | 2 | 2 | 3 |
| *North Carolina* entitled to five Representatives in the First Congress | 1 | 2 | 3 |
| *Number of electors* for President and Vice President in each State shall be equal to the number of Senators and Representatives to which such State may be entitled in Congress | 2 | 1 | 2 |


O.


| | | | |
|---|---|---|---|
| *Oath of office* of the President of the United States. Form of the | 2 | 1 | 7 |
| *Oath or affirmation*. No warrants shall be issued but upon probable cause, supported by. [Amendments] | 4 | | |
| *Oath or affirmation* to support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by | 6 | | 3 |
| But no religious test shall ever be required as a qualification for office | 6 | | 3 |
| The Senators when sitting to try impeachment shall be on | 1 | 3 | 6 |
| *Objections*. If he shall not approve it, the President shall return the bill to the House in which it originated with his | 1 | 7 | 2 |
| *Obligation of contracts*. No State shall pass any *ex post facto* law, or law impairing the | 1 | 10 | 1 |
| *Obligations* incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]. | 14 | 4 | |
| *Offense*. No person shall be twice put in jeopardy of life or limb for the same. [Amendments] | 5 | | |
| *Offenses* against the law of nations. Congress shall provide for punishing. | 1 | 8 | 10 |
| *Offenses* against the United States, except in cases of impeachment. The President may grant reprieves or pardons for | 2 | 2 | 1 |
| *Office* under the United States. No person shall be a Member of either House while holding any civil | 1 | 6 | 2 |
| No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected | 1 | 6 | 2 |
| Or title of any kind from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument | 1 | 9 | 8 |
| *Office* of President, in case of his removal, death, resignation, or inability, shall devolve on the Vice President. The powers and duties of the | 2 | 1 | 5 |
| *Office* during the term of four years. The President and Vice President shall hold | 2 | 1 | 1 |
| Of trust or profit under the United States shall be an elector for President and Vice President. No person holding an | 2 | 1 | 2 |
| *Office*, civil or military under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion. No person shall be a Senator, Representative, or presidential elector, or hold any. [Amendments] | 14 | 3 | |
| *Officers* in the President alone, in the courts of law, or in the heads of departments. Congress may vest the appointment of inferior | 2 | 2 | 2 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Officers* of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The President, Vice President, and all civil | 2 | 4 | |
| *Officers.* The House of Representatives shall choose their Speaker and other | 1 | 2 | 5 |
| The Senate, in the absence of the Vice President, shall choose a President pro tempore, and also their other | 1 | 3 | 5 |
| *Offices* becoming vacant in the recess of the Senate may be filled by the President, the commissions to expire at the end of the next session. | 2 | 2 | 3 |
| *One-fifth* of the members present, be entered on the journal of each House. The yeas and nays shall, at the desire of | 1 | 5 | 3 |
| *Opinion* of the principal officers in each of the executive departments on any subject relating to their duties. The President may require the written | 2 | 2 | 1 |
| *Order*, resolution, or vote (except on a question of adjournment), requiring the concurrence of the two Houses, shall be presented to the President. Every | 1 | 7 | 3 |
| *Original jurisdiction* in all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party. The Supreme Court shall have | 3 | 2 | 2 |
| *Overt act*, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the | 3 | 3 | 1 |

P.

| | | | |
|---|---|---|---|
| *Pardons*, except in cases of impeachment. The President may grant reprieves and | 2 | 2 | 1 |
| *Patent rights* to inventors. Congress may pass laws for securing | 1 | 8 | 8 |
| *Peace.* Members of Congress shall not be privileged from arrest for treason, felony, and breach of the | 1 | 6 | 1 |
| No State shall, without the consent of Congress, keep troops or ships of war in time of | 1 | 10 | 3 |
| No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments] | 3 | | |
| *Pensions and bounties*, shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments] | 14 | 4 | |
| *Pennsylvania* entitled to eight Representatives in the first Congress | 1 | 2 | 3 |
| *People* peaceably to assemble and petition for redress of grievances shall not be abridged by Congress. The right of the. [Amendments] | 1 | | |
| To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the. [Amendments] | 2 | | |
| To be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The right of the. [Amendments] | 4 | | |
| The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments] | 9 | | |
| Powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the. [Amendments] | 10 | | |
| *Perfect Union, etc.* To establish a more. [Preamble] | | | |
| *Persons*, houses, papers, and effects against unreasonable searches and seizures. The people shall be secure in their. [Amendments] | 4 | | |
| *Persons* as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such | 1 | 9 | 1 |
| But a tax or duty of ten dollars shall be imposed on the importation of each of such | 1 | 9 | 1 |
| *Petition* for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments] | 1 | | |
| *Piracies and felonies* committed on the high seas. Congress shall define and punish | 1 | 8 | 10 |
| *Place* than that in which the two Houses shall be sitting. Neither House during the session shall, without the consent of the other, adjourn for more than three days, nor to any other | 1 | 5 | 4 |
| *Places of choosing Senators.* Congress may by law make or alter regulations for the election of Senators and Representatives, except as to the | 1 | 4 | 1 |
| *Ports* of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the | 1 | 9 | 6 |
| *Ports.* Vessels clearing from the ports of one State shall not pay duties in another | 1 | 9 | 6 |
| *Post offices and post roads.* Congress shall establish | 1 | 8 | 7 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Powers* herein granted shall be vested in Congress. All legislative | 1 | 1 | |
| *Powers* vested by the Constitution in the Government or in any department or officer of the United States. Congress shall make all laws necessary to carry into execution the | 1 | 8 | 18 |
| *Powers* and duties of the office shall devolve on the Vice President on the removal, death, resignation, or inability of the President. The | 2 | 1 | 5 |
| *Powers* not delegated to the United States nor prohibited to the States are reserved to the States and to the people. [Amendments] | 10 | | |
| The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments] | 9 | | |
| *Preference*, by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another | 1 | 9 | 6 |
| *Prejudice* any claims of the United States or of any particular State respecting the territory or property of the United States. Nothing in this Constitution shall | 4 | 3 | 2 |
| *Present*, emolument, office, or title of any kind whatever from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of Congress, accept any | 1 | 9 | 8 |
| *Presentment* or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service. No person shall he held to answer for a capital or otherwise infamous crime unless on a. [Amendments] | 5 | | |
| *President of the United States*. The Senate shall choose a President pro tempore when the Vice President shall exercise the office of | 1 | 3 | 5 |
| The Chief Justice shall preside upon the trial of the | 1 | 3 | 6 |
| Shall approve and sign all bills passed by Congress before they shall become laws | 1 | 7 | 2 |
| Shall return to the House in which it originated, with his objections, any bill which he shall not approve | 1 | 7 | 2 |
| If not returned within ten days (Sundays excepted) it shall become a law, unless Congress shall adjourn before the expiration of that time. | 1 | 7 | 2 |
| Every order, resolution, or vote which requires the concurrence of both Houses, except on a question of adjournment, shall be presented to the | 1 | 7 | 3 |
| If disapproved by him, shall be returned and proceeded on as in the case of a bill | 1 | 7 | 3 |
| The executive power shall be vested in a | 2 | 1 | 1 |
| He shall hold his office during the term of four years | 2 | 1 | 1 |
| In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of his office, the Vice President shall perform the duties of | 2 | 1 | 5 |
| Congress may declare, by law, in the case of the removal, death, resignation, or inability of the President, what officer shall act as | 2 | 1 | 5 |
| The President shall receive a compensation which shall not be increased nor diminished during his term, nor shall he receive any other emolument from the United States | 2 | 1 | 6 |
| Before he enters upon the execution of his office he shall take an oath of office | 2 | 1 | 7 |
| Shall be Commander in Chief of the Army and Navy, and of the militia of the States when called into actual service | 2 | 2 | 1 |
| He may require the opinion, in writing, of the principal officer in each of the executive departments | 2 | 2 | 1 |
| He may grant reprieves or pardons for offenses, except in cases of impeachment | 2 | 2 | 1 |
| He may make treaties, by and with the advice and consent of the Senate, two-thirds of the Senators present concurring | 2 | 2 | 2 |
| He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for | 2 | 2 | 2 |
| Congress may vest the appointment of inferior officers in the | 2 | 2 | 2 |
| He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session | 2 | 2 | 3 |
| He shall give information to Congress of the state of the Union, and recommend measures | 2 | 3 | |
| On extraordinary occasions he may convene both Houses or either House of Congress | 2 | 3 | |
| In case of disagreement between the two Houses as to the time of adjournment, he may adjourn them to such time as he may think proper | 2 | 3 | |
| He shall receive ambassadors and other public ministers | 2 | 3 | |
| He shall take care that the laws be faithfully executed | 2 | 3 | |
| He shall commission all the officers of the United States | 2 | 3 | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *President of the United States* shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors | 2 | 4 | |
| No person except a natural-born citizen or a citizen of the United States at the adoption of the Constitution shall be eligible to the office of | 2 | 1 | 4 |
| No person who shall not have attained the age of thirty-five years and been fourteen years a citizen of the United States shall be eligible to the office of | 2 | 1 | 4 |
| *President and Vice President. Manner of choosing.* Each State, by its legislature, shall appoint a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress | 2 | 1 | 2 |
| No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector | 2 | 1 | 2 |
| Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States | 2 | 1 | 3 |
| The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments] | 12 | | |
| They shall name in distinct ballots the person voted for as President and the person voted for as Vice President. [Amendments] | 12 | | |
| They shall make distinct lists of the persons voted for as President and as Vice President, which they shall sign and certify and transmit sealed to the President of the Senate at the seat of government. [Amendments] | 12 | | |
| The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments] | 12 | | |
| The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. [Amendments] | 12 | | |
| If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. [Amendments] | 12 | | |
| In choosing the President, the votes shall be taken by States, the representation from each State having one vote. [Amendments] | 12 | | |
| A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments] | 12 | | |
| But if no choice shall be made before the 4th of March next following, then the Vice President shall act as President, as in the case of the death or disability of the President. [Amendments] | 12 | | |
| *President of the Senate*, but shall have no vote unless the Senate be equally divided. The Vice President shall be | 1 | 3 | 4 |
| *President pro tempore.* In the absence of the Vice President the Senate shall choose a | 1 | 3 | 5 |
| When the Vice President shall exercise the office of President of the United States, the Senate shall choose a | 1 | 3 | 5 |
| *Press.* Congress shall pass no law abridging the freedom of speech or of the. [Amendments] | 1 | | |
| *Previous condition of servitude.* The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or. [Amendments] | 15 | 1 | |
| *Private property* shall not be taken for public use without just compensation. [Amendments] | 5 | | |
| *Privilege.* Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same | 1 | 6 | 1 |
| They shall not be questioned for any speech or debate in either House in any other place | 1 | 6 | 1 |
| *Privileges and immunities of citizens of the United States.* The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States | 4 | 2 | 1 |
| No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments] | 3 | | |
| No person shall be twice put in jeopardy of life or limb for the same offense. [Amendments] | 5 | | |
| All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments] | 14 | 1 | |


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| | Art. | Sec. | |
|---|---|---|---|
| *Privileges and immunities of citizens of the United States.* No State shall make or enforce any law which shall abridge the. [Amendments]. | 14 | 1 | |
| No State shall deprive any person of life, liberty, or property without due process of law. [Amendments] | 14 | 1 | |
| Nor deny to any person within its jurisdiction the equal protection of its laws. [Amendments] | 14 | 1 | |
| *Prizes* captured on land or water. Congress shall make rules concerning. | 1 | 8 | 11 |
| *Probable cause.* The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue for such but upon. [Amendments] | 4 | | |
| *Process of law.* No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due. [Amendments] | 5 | | |
| No State shall deprive any person of life, liberty, or property without due. [Amendments] | 14 | 1 | |
| *Process* for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments] | 6 | | |
| *Progress* of science and useful arts. Congress shall have power to promote the | 1 | 8 | 8 |
| *Property* of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or | 4 | 3 | 2 |
| *Property* without due process of law. No person shall be compelled in any criminal case to be a witness against himself; nor shall he be deprived of his life, liberty, or. [Amendments] | 5 | | |
| No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of his life, liberty, or. [Amendments] | 14 | 1 | |
| *Prosecutions.* The accused shall have a speedy and public trial in all criminal [Amendments] | 6 | | |
| He shall be tried by a jury in the State or district where the crime was committed. [Amendments] | 6 | | |
| He shall be informed of the nature and cause of the accusation [Amendments] | 6 | | |
| He shall be confronted with the witnesses against him. [Amendments] | 6 | | |
| He shall have compulsory process for obtaining witnesses. [Amendments] | 6 | | |
| He shall have counsel for his defense. [Amendments] | 6 | | |
| *Protection* of the laws. No State shall deny to any person within its jurisdiction the equal. [Amendments] | 14 | 1 | |
| *Public debt* of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the. [Amendments] | 14 | 4 | |
| *Public safety* may require it. The writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the | 1 | 9 | 2 |
| *Public trial* by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments] | 6 | | |
| *Public use.* Private property shall not be taken for, without just compensation. [Amendments] | 5 | | |
| *Punishment* according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and | 1 | 3 | 7 |
| *Punishments* inflicted. Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual. [Amendments] | 8 | | |


Q.


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|---|---|---|---|
| *Qualification for office.* No religious test shall ever be required as a | 6 | | 3 |
| *Qualifications* of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the State legislature | 1 | 2 | 1 |
| *Qualifications* of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen | 1 | 2 | 2 |
| *Qualifications* of Senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen | 1 | 3 | 3 |
| Of its own Members. Each House shall be the judge of the election, returns, and | 1 | 5 | 1 |
| Of the President. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President | 2 | 1 | 4 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Qualifications.* Neither shall any person be eligible to the office of President who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States | 2 | 1 | 4 |
| Of the Vice President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice President. [Amendments] | 12 | | |
| *Quartered* in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments] | 3 | | |
| *Quorum* to do business. A majority of each House shall constitute a | 1 | 5 | 1 |
| But a smaller number than a quorum may adjourn from day to day, and may be authorized to compel the attendance of absent Members | 1 | 5 | 1 |
| Of the House of Representatives for choosing a President shall consist of a Member or Members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments] | 12 | | |
| *Quorum* to elect a Vice President by the Senate. Two-thirds of the whole number of Senators shall be a. [Amendments] | 12 | | |
| A majority of the whole number shall be necessary to a choice. [Amendments] | 12 | | |

R.

| | | | |
|---|---|---|---|
| *Race*, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of. [Amendments] | 15 | 1 | |
| *Ratification* of amendments to the Constitution shall be by the legislatures of three-fourths of the several States or by conventions in three-fourths of the States, accordingly as Congress may propose | 5 | | |
| *Ratification* of the conventions of nine States shall be sufficient to establish the Constitution between the States so ratifying the same | 7 | | |
| *Ratio* of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand | 1 | 2 | 3 |
| *Ratio* of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. [Amendments] | 14 | 2 | |
| *Ratio.* But when the right to vote for presidential electors or Members of Congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgment of the right to vote. [Amendments] | 14 | 2 | |
| *Rebellion* against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterwards engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments] | 14 | 3 | |
| But Congress may by a vote of two-thirds of each House remove such disability. [Amendments] | 14 | 3 | |
| *Rebellion* against the United States. Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments] | 14 | 4 | |
| All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments] | 14 | 4 | |
| *Rebellion* or invasion. The writ of *habeas corpus* shall not be suspended except when the public safety may require it in cases of | 1 | 9 | 2 |
| *Receipts* and expenditures of all public money shall be published from time to time. A regular statement of | 1 | 9 | 7 |
| *Recess of the Senate.* The President may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the | 2 | 2 | 3 |
| *Reconsideration* of a bill returned by the President with his objections. Proceedings to be had upon the | 1 | 7 | 2 |
| *Records*, and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts | 4 | 1 | |
| Congress shall prescribe the manner of proving such acts, records, and proceedings | 4 | 1 | |
| *Redress of grievances.* Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the. [Amendments] | 1 | | |
| *Regulations*, except as to the places of choosing Senators. The time, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislatures of the States, but Congress may at any time by law make or alter such | 1 | 4 | 1 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Regulations* of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any | 1 | 9 | 6 |
| *Religion* or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of. [Amendments] | 1 | | |
| *Religious* test shall ever be required as a qualification for any office or public trust under the United States. No | 6 | | 3 |
| *Removal* of the President from office, the same shall devolve on the vice President. In case of the | 2 | 1 | 5 |
| *Representation*. No State, without its consent, shall be deprived of its equal suffrage in the Senate | 5 | | |
| *Representation* and direct taxation, how apportioned among the several States. [This provision is changed by the fourteenth amendment, section 2, page 232] | 1 | 2 | 3 |
| *Representation* until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of | 1 | 2 | 3 |
| *Representation* in any State. The executive thereof shall issue writs of election to fill vacancies in the | 1 | 2 | 4 |
| *Representation* among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of. [Amendments] | 14 | 2 | |
| *Representation*. But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime the basis of representation shall be reduced. [Amendments]. | 14 | 2 | |
| *Representatives*. Congress shall consist of a Senate and House of | 1 | 1 | |
| Qualifications of electors of members of the House of | 1 | 2 | 1 |
| No person shall be a Representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen | 1 | 2 | 2 |
| And direct taxes, how apportioned among the several States. [Amended by fourteenth amendment, section 2, page 227] | 1 | 2 | 3 |
| Shall choose their Speaker and other officers. The House of | 1 | 2 | 5 |
| Shall have the sole power of impeachment. The House of | 1 | 2 | 5 |
| Executives of the States shall issue writs of election to fill vacancies in the House of | 1 | 2 | 4 |
| The times, places, and manner of choosing Representatives shall be prescribed by the legislatures of the States | 1 | 4 | 1 |
| But Congress may at any time by law make or alter such regulations except as to the places of choosing Senators | 1 | 4 | 1 |
| And Senators shall receive a compensation to be ascertained by law | 1 | 6 | 1 |
| Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the House, and in going to and returning from the same | 1 | 6 | 1 |
| Shall not be questioned in any other place for any speech or debate. Members of the House of | 1 | 6 | 1 |
| No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term | 1 | 6 | 2 |
| No person holding any office under the United States shall, while holding such office, be a member of the House of | 1 | 6 | 2 |
| All bills for raising revenue shall originate in the House of | 1 | 7 | 1 |
| No Senator or Representative shall be an elector for President or Vice President | 2 | 1 | 2 |
| *Representatives* shall be bound by an oath or affirmation to support the Constitution of the United States. The Senators and | 6 | | 3 |
| *Representatives* among the several States. Provisions relative to the apportionment of. [Amendments] | 14 | 2 | |
| *Representatives and Senators*. Prescribing certain disqualifications for office as. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disqualification. [Amendments] | 14 | 3 | |
| *Reprieves* and pardons except in cases of impeachment. The President may grant | 2 | 2 | 1 |
| *Reprisal*. Congress shall have power to grant letters of marque and | 1 | 8 | 11 |
| No State shall grant any letters of marque and | 1 | 10 | 1 |
| *Republican* form of government. The United States shall guarantee to every State in this Union a | 4 | 4 | |
| And shall protect each of them against invasion; and on the application of the legislature or of the executive (when the legislature can not be convened), against domestic violence | 4 | 4 | |
| *Reserved rights* of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments] | 9 | | |
| The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. [Amendments] | 10 | | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Resignation*, or inability of the President, the duties and powers of his office devolve on the Vice President. In case of the death | 2 | 1 | 5 |
| *Resignation*, or inability of the President. Congress may by law provide for the case of the removal, death | 2 | 1 | 5 |
| *Resolution*, or vote (except on a question of adjournment) requiring the concurrence of the two Houses shall, before it becomes a law, be presented to the President. Every order | 1 | 7 | 3 |
| *Revenue* shall originate in the House of Representatives. All bills for raising | 1 | 7 | 1 |
| *Revenue*. Preference shall not be given to the ports of one State over those of another by any regulations of commerce or | 1 | 9 | 6 |
| *Rhode Island* entitled to one Representative in the First Congress | 1 | 2 | 3 |
| *Right of petition*. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments] | 1 | | |
| *Right to keep and bear arms*. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments] | 2 | | |
| *Rights* in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments] | 9 | | |
| *Rights* not delegated to the United States nor prohibited to the States are reserved to the States respectively or to the people. [Amendments] | 10 | | |
| *Rules* of its proceedings. Each House may determine the | 1 | 5 | 2 |
| *Rules and regulations* respecting the territory or other property of the United States. Congress shall dispose of and make all needful | 4 | 3 | 2 |
| *Rules of the common law*. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments] | 7 | | |
| No fact tried by a jury shall be reexamined except according to the. [Amendments] | 7 | | |


S.


| | | | |
|---|---|---|---|
| *Science and the useful arts* by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of | 1 | 8 | 8 |
| *Searches and seizures* shall not be violated. The right of the people to be secure against unreasonable. [Amendments] | 4 | | |
| *Searches and seizures*. And no warrants shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched and the person or things to be seized. [Amendments] | 4 | | |
| *Seat of government*. Congress shall exercise exclusive legislation in all cases over such district as may become the | 1 | 8 | 17 |
| *Securities* and current coin of the United States. Congress shall provide for punishing the counterfeiting of the | 1 | 8 | 6 |
| *Security of a free State*, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments] | 2 | | |
| *Senate and House of Representatives*. The Congress of the United States shall consist of a | 1 | 1 | |
| *Senate of the United States*. The Senate shall be composed of two Senators from each State, chosen by the legislature for six years | 1 | 3 | 1 |
| If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature | 1 | 3 | 2 |
| The Vice President shall be President of the Senate, but shall have no vote unless the Senate be equally divided | 1 | 3 | |
| The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President or when he shall exercise of the office of President | 1 | 3 | |
| The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation | 1 | 3 | 6 |
| When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the Members present | 1 | 3 | 6 |
| It shall be the judge of elections, returns, and qualifications of its own Members | 1 | 5 | 1 |
| A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members | 1 | 5 | 1 |
| It may determine the rules of its proceedings, punish a Member for disorderly behavior, and with the concurrence of two-thirds expel a Member | 1 | 5 | 2 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Senate of the United States.* It shall keep a journal of its proceedings and from time to time publish the same, except such parts as may in their judgment require secrecy | 1 | 5 | 3 |
| It shall not adjourn for more than three days during a session without the consent of the other House | 1 | 5 | 4 |
| It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives | 1 | 7 | 1 |
| The Senate shall advise and consent to the ratification of all treaties, provided two-thirds of the Members present concur | 2 | 2 | 2 |
| It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for | 2 | 2 | 2 |
| It may be convened by the President on extraordinary occasions | 2 | 3 | |
| No State, without its consent, shall be deprived of its equal suffrage in the Senate | 5 | | |
| *Senators* shall, immediately after assembling, under their first election, be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year | 1 | 3 | 2 |
| No person shall be a Senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the State for which he shall be chosen | 1 | 3 | 3 |
| The times, places, and manner of choosing Senators may be fixed by the legislature of a State, but Congress may by law make or alter such regulations, except as to the places of choosing | 1 | 4 | 1 |
| If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature | 1 | 3 | 2 |
| They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate and in going to and returning from the same | 1 | 6 | 1 |
| *Senators* and Representatives shall receive a compensation to be ascertained by law | 1 | 6 | 1 |
| Senators and Representatives shall not be questioned for any speech or debate in either House in any other place | 1 | 6 | 1 |
| No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term | 1 | 6 | 2 |
| No person holding any office under the United States shall be a member of either House during his continuance in office | 1 | 6 | 2 |
| No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector for President and Vice President | 2 | 1 | 2 |
| Senators and Representatives shall be bound by an oath or affirmation to support the Constitution | 6 | | 3 |
| No person shall be a Senator or Representative who having, as a Federal or State officer, taken an oath to support the Constitution, afterwards engaged in rebellion against the United States. [Amendments] | 14 | 3 | |
| But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments] | 14 | 3 | |
| *Service or labor* in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from | 4 | 2 | 3 |
| *Servitude*, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction. Neither slavery nor involuntary. [Amendments] | 13 | 1 | |
| *Servitude.* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of. [Amendments] | 15 | 1 | |
| *Ships of war* in time of peace, without the consent of Congress. No State shall keep troops or | 1 | 10 | 3 |
| *Silver coin* a tender in payment of debts. No State shall make anything but gold and | 1 | 10 | 1 |
| *Slave.* Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any. [Amendments] | 14 | 4 | |
| *Slavery* nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither. [Amendments] | 13 | 1 | |
| *Soldiers* shall not be quartered, in time of peace, in any house without the consent of the owner. [Amendments] | 3 | | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *South Carolina* entitled to five Representatives in the First Congress | 1 | 2 | 3 |
| *Speaker* and other officers. The House of Representatives shall choose their | 1 | 2 | 5 |
| *Speech or of the press.* Congress shall make no law abridging the freedom of. [Amendments] | 1 | | |
| *Speedy and public* trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments] | 6 | | |
| *Standard of weights* and measures. Congress shall fix the | 1 | 8 | 5 |
| *State of the Union.* The President shall, from time to time, give Congress information of the | 2 | 3 | |
| *State legislatures*, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several | 6 | | 3 |
| *States.* When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies | 1 | 2 | 4 |
| Congress shall have power to regulate commerce among the several | 1 | 8 | 3 |
| No State shall enter into any treaty, alliance, or confederation | 1 | 10 | 1 |
| Shall not grant letters of marque and reprisal | 1 | 10 | 1 |
| Shall not coin money | 1 | 10 | 1 |
| Shall not emit bills of credit | 1 | 10 | 1 |
| Shall not make anything but gold and silver coin a tender in payment of debts | 1 | 10 | 1 |
| Shall not pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts | 1 | 10 | 1 |
| Shall not grant any title of nobility | 1 | 10 | 1 |
| Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws | 1 | 10 | 2 |
| Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay | 1 | 10 | 3 |
| Full faith and credit in every other State shall be given to the public acts, records, and judicial proceedings of each State | 4 | 1 | |
| Congress shall prescribe the manner of proving such acts, records, and proceedings | 4 | 1 | |
| Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States | 4 | 2 | 1 |
| New States may be admitted by Congress into this Union | 4 | 3 | 1 |
| But no new State shall be formed or erected within the jurisdiction of another State | 4 | 3 | 1 |
| Nor any State formed by the junction of two or more States or parts of States, without the consent of the legislatures as well as of Congress | 4 | 3 | 1 |
| No State shall be deprived, without its consent, of its equal suffrage in the Senate | 5 | | |
| Three-fourths of the legislatures of the States or conventions of three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution | 5 | | |
| The United States shall guarantee a republican form of government to every State in the Union | 4 | 4 | |
| They shall protect each State against invasion | 4 | 4 | |
| And on application of the legislature, or the executive (when the legislature can not be convened), against domestic violence | 4 | 4 | |
| The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same | 7 | | |
| When the choice of President shall devolve on the House of Representatives, the vote shall be taken by States. [Amendments] | 12 | | |
| But in choosing the President the vote shall be taken by States, the representation from each State having one vote. [Amendments] | 12 | | |
| A quorum for choice of President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments] | 12 | | |
| *States* or to the people. Powers not delegated to the United States, nor prohibited to the States, are reserved to the. [Amendments] | 10 | | |
| *Suffrage* in the Senate. No State shall be deprived without its consent of its equal | 5 | | |
| *Suits* at common law, where the value in controversy shall exceed twenty dollars, shall be tried by jury. [Amendments] | 7 | | |
| In law or equity against one of the States by citizens of another State or by citizens of a foreign State. The judicial power of the United States shall not extend to. [Amendments] | 11 | | |
| *Supreme Court.* Congress shall have power to constitute tribunals inferior to the | 1 | 8 | 9 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Supreme Court*, and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one | 3 | 1 | |
| The judges of the Supreme and inferior courts shall hold their offices during good behavior | 3 | 1 | |
| The compensation of the judges shall not be diminished during their continuance in office | 3 | 1 | |
| *Supreme Court* shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party. The | 3 | 2 | 2 |
| Shall have appellate jurisdiction, both as to law and fact, with such exceptions and regulations as Congress may make. The | 3 | 2 | 2 |
| *Supreme law* of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States shall be the | 6 | | 2 |
| The judges in every State shall be bound thereby | 6 | | 2 |
| *Suppress* insurrections, and repel invasions. Congress shall provide for calling forth the militia to execute the laws | 1 | 8 | 15 |
| *Suppression* of insurrection or rebellion, shall not be questioned. The public debt, including the debt for pensions and bounties incurred in the. [Amendments] | 14 | 4 | |

T.

| | | | |
|---|---|---|---|
| *Tax* shall be laid unless in proportion to the census or enumeration. No capitation or other direct | 1 | 9 | 4 |
| *Tax* or duty shall be laid on articles exported from any State. No | 1 | 9 | 5 |
| *Taxes* (direct) and Representatives, how apportioned among the several States. [See fourteenth amendment, section 2, page 232] | 1 | 2 | 3 |
| *Taxes*, duties, imposts, and excises. Congress shall have power to lay | 1 | 8 | 1 |
| They shall be uniform throughout the United States | 1 | 8 | 1 |
| *Temporary appointments* until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a State, the executive of the State shall make | 1 | 3 | 2 |
| *Tender* in payment of debts. No State shall make anything but gold and silver coin a | 1 | 10 | 1 |
| *Term of four years*. The President and Vice President shall hold their offices for the | 2 | 1 | 1 |
| *Term* for which he is elected. No Senator or Representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the | 1 | 6 | 2 |
| *Territory* or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the | 4 | 3 | 2 |
| *Test* as a qualification for any office or public trust shall ever be required. No religious | 6 | | 3 |
| *Testimony* of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the | 3 | 3 | 1 |
| *Three-fourths of the legislatures* of the States, or conventions in three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution | 5 | | |
| *Tie*. The Vice President shall have no vote unless the Senate be equally divided | 1 | 3 | 4 |
| *Times, places, and manner* of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof | 1 | 4 | 1 |
| But Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators | 1 | 4 | 1 |
| *Title of nobility*. The United States shall not grant any | 1 | 9 | 8 |
| No State shall grant any | 1 | 10 | 1 |
| *Title* of any kind, from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any | 1 | 9 | 8 |
| *Tonnage* without the consent of Congress. No State shall lay any duty of | 1 | 10 | 3 |
| *Tranquillity*, provide for the common defense, etc. To insure domestic. [Preamble] | | | |
| *Treason* shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort | 3 | 3 | 1 |
| *Treason*. No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of | 3 | 3 | 1 |
| Congress shall have power to declare the punishment of | 3 | 3 | 2 |
| Shall not work corruption of blood. Attainder of | 3 | 3 | 2 |
| Shall not work forfeiture, except during the life of the person attainted. Attainder of | 3 | 3 | 2 |
| *Treason, bribery*, or other high crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed from office on impeachment for and conviction of | 2 | 4 | |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Treason, felony, and breach of the peace.* Senators and Representatives shall be privileged from arrest while attending or while going to or returning from the sessions of Congress, except in cases of | 1 | 6 | 1 |
| *Treasury*, but in consequence of appropriations made by law. No money shall be drawn from the | 1 | 9 | 7 |
| *Treaties.* The President shall have power, with the advice and consent of the Senate, provided two-thirds of the Senators present concur, to make | 2 | 2 | 2 |
| The judicial power shall extend to all cases arising under the Constitution, laws, and | 3 | 2 | 1 |
| They shall be the supreme law of the land, and the judges in every State shall be bound thereby | 6 | | 2 |
| *Treaty*, alliance, or confederation. No State shall enter into any | 1 | 10 | 1 |
| *Trial*, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from and disqualification for office; but the party convicted shall nevertheless be liable and subject to indictment | 1 | 3 | 7 |
| *Trial by jury.* All crimes, except in cases of impeachment, shall be tried by jury | 3 | 2 | 3 |
| Such trial shall be held in the State within which the crime shall have been committed | 3 | 2 | 3 |
| But when not committed within a State, the trial shall be at such place as Congress may by law have directed | 3 | 2 | 3 |
| In all criminal prosecutions the accused shall have a speedy and public. [Amendments] | 6 | | |
| Suits at common law, when the amount exceeds twenty dollars, shall be by. [Amendments] | 7 | | |
| *Tribunals* inferior to the Supreme Court. Congress shall have power to constitute | 1 | 8 | 9 |
| *Troops* or ships of war in time of peace without the consent of Congress. No State shall keep | 1 | 10 | 3 |
| *Trust or profit* under the United States shall be an elector for President and Vice President. No Senator, Representative, or person holding any office of | 2 | 1 | 2 |
| *Two-thirds* of the Members present. No person shall be convicted on impeachment without the concurrence of | 1 | 3 | 6 |
| *Two-thirds*, may expel a Member. Each House, with the concurrence of. | 1 | 5 | 2 |
| *Two-thirds.* A bill returned by the President with his objections may be repassed by each House by a vote of | 1 | 7 | 2 |
| *Two-thirds* of the Senators present concur. The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided | 2 | 2 | 2 |
| *Two-thirds* of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of | 5 | | |
| *Two-thirds* of both Houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever | 5 | | |
| *Two-thirds* of the States. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a Member or Members from. [Amendments] | 12 | | |
| *Two-thirds* of the whole number of Senators. A quorum of the Senate, when choosing a Vice President, shall consist of. [Amendments] | 12 | | |
| *Two-thirds*, may remove the disabilities imposed by the third section of the fourteenth amendment. Congress, by a vote of. [Amendments] | 14 | 3 | |
| *Two years.* Appropriations for raising and supporting armies shall not be for a longer term than | 1 | 8 | 12 |


U.


| | | | |
|---|---|---|---|
| *Union.* To establish a more perfect. [Preamble] | | | |
| The President shall, from time to time, give to Congress information of the state of the | 2 | 3 | |
| New States may be admitted by Congress into this | 4 | 3 | 1 |
| But no new State shall be formed or erected within the jurisdiction another State | 4 | 3 | 1 |
| *Unreasonable* searches and seizures. The people shall be secured in their persons, houses, papers, and effects against. [Amendments] | 4 | | |
| And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. [Amendments] | 4 | | |
| *Unusual* punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and. [Amendments] | 8 | | |




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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Use* without just compensation. Private property shall not be taken for public. [Amendments] | 5 | | |
| *Useful* arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the | 1 | 8 | 8 |

V.

| | | | |
|---|---|---|---|
| *Vacancies* happening in the representation of a State. The executive thereof shall issue writs of election to fill | 1 | 2 | 4 |
| *Vacancies* happening in the Senate in the recess of the legislature of a State. How filled | 1 | 3 | 2 |
| *Vacancies* that happened during the recess of the Senate, by granting commissions which shall expire at the end of the next session. The President shall have power to fill | 2 | 2 | 3 |
| *Validity* of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments] | 14 | 4 | |
| *Vessels* bound to or from the ports of one State shall not be obliged to enter, clear, or pay duties in another State | 1 | 9 | 6 |
| *Veto* of a bill by the President. Proceedings of the two Houses upon the | 1 | 7 | 2 |
| *Vice President* of the United States shall be President of the Senate | 1 | 3 | 4 |
| He shall have no vote unless the Senate be equally divided | 1 | 3 | 4 |
| The Senate shall elect a President pro tempore in the absence of the | 1 | 3 | 5 |
| He shall be chosen for the term of four years | 2 | 1 | 1 |
| The number and the manner of appointing electors for President and | 2 | 1 | 2 |
| In case of the removal, death, resignation, or inability of the President, the powers and duties of his office shall devolve on the | 2 | 1 | 5 |
| Congress may provide by law for the case of the removal, death, resignation, or inability both of the President and | 2 | 1 | 5 |
| On impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors shall be removed from office. The | 2 | 4 | |
| *Vice President. The manner of choosing the.* The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments] | 12 | | |
| The electors shall name, in distinct ballots, the person voted for as Vice President. [Amendments] | 12 | | |
| They shall make distinct lists of the persons voted for as Vice President, which lists they shall sign and certify, and send sealed to the seat of government, directed to the President of the Senate. [Amendments] | 12 | | |
| The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments] | 12 | | |
| The person having the greatest number of votes shall be Vice President, if such number be a majority of the whole number of electors. [Amendments] | 12 | | |
| If no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President. [Amendments] | 12 | | |
| A quorum for this purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice. [Amendments] | 12 | | |
| But if the House shall make no choice of a President before the 4th of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. [Amendments] | 12 | | |
| No person constitutionally ineligible as President shall be eligible as. [Amendments] | 12 | | |
| *Violence.* The United States shall guarantee to every State a republican form of government, and shall protect each State against invasion and domestic | 4 | 4 | |
| *Virginia* entitled to ten representatives in the First Congress | 1 | 2 | 3 |
| *Vote.* Each Senator shall have one | 1 | 3 | 1 |
| The Vice President, unless the Senate be equally divided, shall have no | 1 | 3 | 4 |
| *Vote* requiring the concurrence of the two Houses (except upon a question of adjournment) shall be presented to the President. Every order, resolution, or | 1 | 7 | 3 |
| *Vote* shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments] | 15 | 1 | |
| *Vote of two-thirds.* Each House may expel a Member by a | 1 | 5 | 2 |
| A bill vetoed by the President may be repassed in each House by a | 1 | 7 | 2 |
| No person shall be convicted on an impeachment except by a | 1 | 3 | 6 |


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| | Art. | Sec. | Cl. |
|---|---|---|---|
| *Vote of two-thirds.* Whenever both Houses shall deem it necessary, Congress may propose amendments to the Constitution by a..... | 5 | | |
| The President may make treaties, with the advice and consent of the Senate, by a..... | 2 | 2 | 2 |
| Disabilities incurred by participation in insurrection or rebellion may be relieved by Congress by a. [Amendments]..... | 14 | 3 | |

W.

| | | | |
|---|---|---|---|
| *War*, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare.... | 1 | 8 | 11 |
| For governing the land and naval forces. Congress shall have power to make rules and articles of..... | 1 | 8 | 14 |
| No State shall, without the consent of Congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in..... | 1 | 10 | 3 |
| *War* against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying..... | 3 | 3 | 1 |
| *Warrants* shall issue but upon probable cause, on oath or affirmation, describing the place to be searched and the persons or things to be seized. No. [Amendments]..... | 4 | | |
| *Weights and measures.* Congress shall fix the standard of..... | 1 | 8 | 5 |
| *Welfare*, and to secure the blessings of liberty, etc. To promote the general. [Preamble]..... | | | |
| *Welfare.* Congress shall have power to provide for the common defense and general..... | 1 | 8 | 1 |
| *Witness* against himself. No person shall, in a criminal case, be compelled to be a. [Amendments]..... | 5 | | |
| *Witnesses* against him. In all criminal prosecutions the accused shall be confronted with the. [Amendments]..... | 6 | | |
| *Witnesses* in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining. [Amendments]..... | 6 | | |
| *Witnesses* to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two..... | 3 | 3 | 1 |
| *Writ of habeas corpus* shall not be suspended, unless in case of rebellion or invasion the public safety may require it..... | 1 | 9 | 2 |
| *Writs* of election to fill vacancies in the representation of any State. The executive of the State shall issue..... | 1 | 2 | 4 |
| *Written* opinion of the principal officer in each of the executive departments on any subject relating to the duties of his office. The President may require the..... | 2 | 2 | 1 |

Y.

| | | | |
|---|---|---|---|
| *Yeas and nays* of the Members of either House shall, at the desire of one-fifth of those present, be entered on the journals..... | 1 | 5 | 3 |
| The votes of both Houses upon the reconsideration of a bill returned by the President with his objections shall be determined by..... | 1 | 7 | 2 |


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# TREATY CONCERNING THE CESSION OF THE RUSSIAN POSSESSIONS IN NORTH AMERICA.[1]

## By His Majesty the Emperor of all the Russias to the United States of America.

Concluded March 30, 1867.
Ratified by the United States May 28, 1867.
Ratifications exchanged June 20, 1867.
Proclaimed by the United States, June 20, 1867.

Articles.


I. Territory ceded, boundaries.
II. Public property ceded.
III. Citizenship of inhabitants; uncivilized tribes.
IV. Formal delivery.
V. Withdrawal of troops.
VI. Payment; effect of cession.
VII. Ratification.


Preamble.

The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their Plenipotentiaries: the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the Privy Counsellor Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

Contracting power.

And the said Plenipotentiaries, having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

### Article I.

Territory ceded.

His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28–16, 1825, and described in Articles III and IV of said convention, in the following terms:

Boundaries.

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133d degree of west longitude, (meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean.

[1] Federal Cases, Kinkead v. U. S. (150 U. S. 483 Rep.; 18 Ct. Cl. 504; 24 Ct. Cl. 459); Callsen v. Hope, (75 Fed. Rep. 758); Rassmussen v. U. S. (197 U. S. Rep. 516).



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"IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

"1st That the island called Prince of Wales Island shall belong wholly to Russia," (now, by this cession, to the United States.)

"2nd That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusemstern, or Ignalook, and the Island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group, in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

## ARTICLE II.

Public property ceded.

In the cession of territory and dominion made by the preceding article, are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian government, shall remain the property of such members of the Greek Oriental Church resident in the territory, as may choose to worship therein. Any Government archives, papers and documents relative to the territory and dominion aforesaid, which may now be existing there, will be left in the possession of the agent of the United States; but an authenticated copy of such of them as may be required, will be, at all times, given by the United States to the Russian government, or to such Russian officers or subjects as they may apply for.

## ARTICLE III.

Citizenship of inhabitants.

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years, but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion.

Uncivilized tribes.

The uncivilized tribes will be subject to such laws and regulations as the United States, may from time to time, adopt in regard to aboriginal tribes of that country.

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ARTICLE IV.

Formal delivery.

His Majesty, the Emperor of all the Russias shall appoint, with convenient despatch, an agent or agents for the purpose of formally delivering to a similar agent or agents appointed on behalf of the United States, the territory, dominion, property, dependencies and appurtenances which are ceded as above, and for doing any other act which may be necessary in regard thereto. But the cession, with the right of immediate possession, is nevertheless to be deemed complete and absolute on the exchange of ratifications, without waiting for such formal delivery.

ARTICLE V.

Withdrawal of troops.

Immediately after the exchange of the ratifications of this convention, any fortifications or military posts which may be in the ceded territory, shall be delivered to the agent of the United States, and any Russian troops which may be in the territory shall be withdrawn as soon as may be reasonably and conveniently practicable.

ARTICLE VI.

Payment.

In consideration of the cession aforesaid, the United States agree to pay at the Treasury in Washington, within ten months after the exchange of the ratifications of this convention, to the diplomatic representative or other agent of his Majesty the Emperor of all the Russias, duly authorized to receive the same, seven million two hundred thousand dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property-holders; and the cession hereby made, conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.

Effect of cession.

ARTICLE VII.

Ratification.

When this convention shall have been duly ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part, and on the other by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington within three months from the date hereof, or sooner, if possible.

In faith whereof, the respective plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at Washington, the thirtieth day of March in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] EDOUARD DE STOECKL,
[SEAL.] WILLIAM H. SEWARD.

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# DECISION OF THE ALASKAN BOUNDARY TRIBUNAL

## Under the Treaty of January 24, 1903, Between the United States and Great Britain.

Whereas by a Convention signed at Washington on the 24th day of January, 1903, by Plenipotentiaries of and on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and of and on behalf of the United States of America, it was agreed that a Tribunal should be appointed to consider and decide the questions hereinafter set forth, such Tribunal to consist of six impartial Jurists of repute, who should consider judicially the questions submitted to them each of whom should first subscribe an oath that he would impartially consider the arguments and evidence presented to the said Tribunal, and would decide thereupon according to his true judgment, and that three members of the said Tribunal should be appointed by His Britannic Majesty and three by the President of the United States:

And whereas it was further agreed by the said Convention that the said Tribunal should consider in the settlement of the said questions submitted to its decision the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias under date of the 28th (16th) February A D 1825 and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March A D 1867, and particularly the Articles III, IV and V of the first mentioned Treaty, and should also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of the said Treaties so far as the same tended to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said Treaties.

And whereas it was further agreed by the said Convention, referring to Articles III, IV and V of the said Treaty of 1825, that the said Tribunal should answer and decide the following questions:—

1. What is intended as the point of commencement of the line?
2. What channel is the Portland Channel?
3. What course should the line take from the point of commencement to the entrance to Portland Channel?
4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?
5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland not exceeding 10 marine leagues in width, separat-



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ing the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

6. If the foregoing question should be answered in the negative and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast should the width of the *lisière*, which was to belong to Russia be measured (1) from the mainland coast of the ocean, strictly so-called along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (*a*) from the line of the general direction of the mainland coast, or (*b*) from the line separating the waters of the ocean from the territorial waters of Russia, or (*c*) from the heads of the aforesaid inlets?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?

And whereas His Britannic Majesty duly appointed Richard Everard, Baron Alverstone, G. C. M. G. Lord Chief Justice of England, Sir Louis Amable Jetté K. C. M. G. Lieutenant-Governor of the Province of Quebec, and Allen Bristol Aylesworth one of His Majesty's Counsel, and the President of the United States of America duly appointed the Honourable Elihu Root Secretary of War of the United States, the Honourable Henry Cabot Lodge, Senator of the United States from the State of Massachusetts and the Honourable George Turner of the State of Washington, to be members of the said Tribunal.

Now therefore we the Undersigned having each of us first subscribed an oath as provided by the said Convention and having taken into consideration the matters directed by the said Convention to be considered by us, and having judicially considered the said questions submitted to us, do hereby make Answer and Award as follows:—

In answer to the *first* question

The Tribunal unanimously agrees that the point of commencement of the line is Cape Muzon.

In answer to the *second* question

The Tribunal unanimously agrees that the Portland Channel is the Channel which runs from about 55° 56′ NL and passes to the north of Pearse and Wales Islands.

A majority of the Tribunal that is to say Lord Alverstone, Mr Root, Mr Lodge, and Mr Turner decides that the Portland Channel after passing to the north of Wales Island is the channel between Wales Island and Sitklan Island called Tongass Channel. The Portland Channel above mentioned is marked throughout its length by a dotted red line from the point B to the point marked C on the map signed in duplicate by the members of the Tribunal at the time of signing their decision.

In answer to the *third* question

A majority of the Tribunal that is to say Lord Alverstone, Mr. Root, Mr Lodge, and Mr Turner decides that the course of the line from the point of commencement to the entrance to Portland Channel is the line marked A B in red on the aforesaid map.

In answer to the *fourth* question

A majority of the Tribunal that is to say Lord Alverstone Mr Root Mr Lodge and Mr Turner decides that the point to which the line is to be drawn from the head of the Portland Channel is the

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point on the 56th parallel of latitude marked D on the aforesaid map and the course which the line should follow is drawn from C to D on the aforesaid map.

In answer to the *fifth* question

A majority of the Tribunal, that is to say Lord Alverstone Mr Root Mr Lodge and Mr Turner decides that the answer to the above question is in the affirmative.

Question five having been answered in the affirmative question *six* requires no answer.

In answer to the *seventh* question

A majority of the Tribunal that is to say Lord Alverstone, Mr Root, Mr Lodge and Mr Turner decides that the mountains marked S on the aforesaid map are the mountains referred to as situated parallel to the coast on that part of the coast where such mountains marked S are situated and that between the points marked P (mountain marked S 8,000) on the north and the point marked T (mountain marked S 7,950) in the absence of further survey the evidence is not sufficient to enable the Tribunal to say which are the mountains parallel to the coast within the meaning of the Treaty.

In witness whereof we have signed the above written decision upon the questions submitted to us.

Signed in duplicate this twentieth day of October 1903.

ALVERSTONE.
ELIHU ROOT
HENRY CABOT LODGE
GEORGE TURNER

Witness
REGINALD TOWER:
*Secretary.*

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# COMPILED LAWS OF THE TERRITORY OF ALASKA, 1912.

## TITLE I.

## COLLECTION OF DUTIES UPON IMPORTS.

(Treasury Department.)

## CHAPTER ONE.

### COLLECTION DISTRICTS, PORTS, AND OFFICERS.


Sec.
1. Customs laws extended to Alaska.
2. Territory ceded a collection district.
3. Ports of delivery established.
4. Buildings at Mary Island and Sand Point provided for.
5. Collection district reorganized.
6. Subports designated by the Secretary of the Treasury.
7. All conflicting acts repealed.
8. Juneau substituted for Sitka and collector required to live there.
9. Bonded warehouse privilege to Canadians. (See notes.)


July 27, 1868.

15 Stat. L., 240; R. S., 1954.

Customs, etc., laws of the United States extended to territory ceded to the United States by Emperor of Russia.

SECTION 1. The laws of the United States relating to customs, commerce, and navigation be, and the same are hereby, extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto.

Territory to constitute the collection district of Alaska.

Port of entry.

Collector.

R. S., secs. 2591, 2592.

See treaty, 15 Stat. L., 539.

SEC. 2. That all of the said territory, with its ports, harbors, bays, rivers, and waters, shall constitute a customs collection district, to be called the district of Alaska, for which said district a port of entry shall be established at some convenient point to be designated by the President, at or near the town of Sitka or New Archangel, and a collector of customs shall be appointed by the President, by and with the advice and consent of the Senate, who shall reside at the said port of entry, and who shall receive an annual salary of two thousand five hundred dollars, in addition to the usual legal fees and emoluments of the office. But his entire compensation shall not exceed four thousand dollars per annum, or a proportionate sum for a less period of time.

Mar. 3, 1891.

26 Stat. L., 1087, ch. 552.

Alaska collection district.

Ports of delivery established.

Officers.

1 Supp. R. S., 937, amended; see secs. 5 and 6.

SEC. 3. That Mary Island, Wrangel, Juneau, Sand Point, Kodiak, and Ounalaska be, and the same are hereby, constituted ports of delivery within the collection district of Alaska. The Secretary of the Treasury may designate customs officers to be stationed at each of said ports with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services as in his judgment the exigencies of commerce may require.

Buildings at Mary Island and Sand Point.

SEC. 4. That the Secretary of the Treasury be, and is hereby, authorized to provide the necessary buildings for the transaction of the public business at Mary Island and Sand Point at a cost not to



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exceed in the aggregate fifteen thousand dollars, which sum is hereby appropriated for the purpose.

Mar. 16, 1896.
29 Stat. L., p. 60.
Alaska customs district.
R. S., secs. 2591–2592, pp. 512, 513, amended.
2 Supp. R. S., 452.
Subports of entry and delivery.
Officers.
Juneau substituted for Sitka; see sec. 8.

SEC. 5. That the customs collection district of Alaska be, and the same is hereby, reorganized and established to comprise the Territory of Alaska, in which Sitka shall be the port of entry.

SEC. 6. That such other places as may be designated by the Secretary of the Treasury, as the interests of commerce may require, shall be subports of entry or delivery, or both; and customs officers shall be stationed at such subports, with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of commerce may require.

Repeal.

SEC. 7. That all acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Apr. 28, 1904.
Alaska customs district.
Juneau made port of entry.
R. S., sec. 2592, 513, amended.

SEC. 8. That section twenty-five hundred and ninety-two of the Revised Statutes of the United States, second edition, eighteen hundred and seventy-eight, be amended by striking out the word "Sitka" in the last line of the section and inserting in lieu thereof the word "Juneau." The collector of customs for the customs collection district of Alaska shall reside at Juneau, which is hereby made and constituted the port of entry for said district instead of Sitka.

May 14, 1898.
30 Stat. L., p. 415.
Bonding privilege to Canada.

SEC. 9. That, under rules and regulations to be prescribed by the Secretary of the Treasury, the privilege of entering goods, wares, and merchandise in bond or of placing them in bonded warehouses at any of the ports in the district of Alaska, and of withdrawing the same for exportation to any place in British Columbia or the Northwest Territory without payment of duty, is hereby granted to the Government of the Dominion of Canada and its citizens or citizens of the United States and to persons who have declared their intention to become such, whenever and so long as it shall appear to the satisfaction of the President of the United States, who shall ascertain and declare the fact by proclamation, that corresponding privileges have been and are being granted by the Government of the Dominion of Canada in respect to goods, wares, and merchandise passing through the territory of the Dominion of Canada to any point in the district of Alaska from any point in said district.

NOTE.—R. S., secs. 2954–3008, makes provision for the bonded-warehouse system and the transportation of goods in bond.

By act of 1880, June 10, ch. 190 (1 Supp. R. S., 293), 21 Stat. L., 173, provision is made for the immediate transportation of dutiable goods, etc.

By act of 1890, October 1, ch. 1244, sec. 54 (1 Supp. R. S., 869), 26 Stat. L., 567, merchandise, etc., deposited in bonded warehouses may be withdrawn for consumption in three years.

By act of 1874, June 22, ch. 391 (1 Supp. R. S., 36), 18 Stat. L., 186, the Secretary of the Treasury is to regulate bonded warehouses, etc.

For tariff rates and customs regulations, see Gen. Stat., or apply to collector or Secretary of the Treasury.

Duties of collectors as to nationalization of vessels, see title Commerce and navigation.

Right to search and seize vessels, see title Fish and fisheries; also title Game, and laws for protection of.

For ports of entry and subports and ports of delivery, apply to collector or Secretary of the Treasury.

For act of February 11, 1898, providing for revenue cutter for service on Yukon River, see 30 Stat. L., 241.

Act of 1825 (4 Stat. L., 118; R. S., 5481), defining crime of extortion under color of office, so far as officers of customs are concerned, is an act relating to customs and was, therefore, extended over Alaska by act extending customs laws over Alaska.

U. S. *v.* Carr, 3 Saw. (U. S.), 302.

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# TITLE II.

## REGULATION OF COMMERCE AND NAVIGATION.

(Department of Commerce and Labor.)


| Chap. | | Sec. |
|---|---|---|
| 1. | Nationalization of vessels, coasting trade, departmental control, etc | 10 |
| 2. | Aids to navigation | 15 |
| 3. | Regulations affecting navigation | 21 |


## CHAPTER ONE.

### NATIONALIZATION OF VESSELS, COASTING TRADE, DEPARTMENTAL CONTROL, ETC.


Sec.
10. Commerce and navigation laws extended to.
11. Nationalization of vessels.
12. Coasting trade.
13. Authority of Secretary of the Treasury over shipping, etc., transferred.
14. New coasting districts established.


July 27, 1868.

15 Stat. L., 240; R. S., 1954.
See treaty June 20, 1867, 15 Stat. L., 539.

SEC. 10. The laws of the United States relating to customs, commerce, and navigation be, and the same are hereby, extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto.

July 27, 1868.

15 Stat. L., p. 249.
Regulations for the nationalization of vessels owned by residents of the ceded territory.
R. S., 4140, p. 796.
Bonds may be required of deputy collectors authorized to act as collector.
1866, ch. 201, sec. 29.
Vol. xiv, p. 185.

SEC. 11. That the Secretary of the Treasury be, and he is hereby, authorized to make and prescribe such regulations as he may deem expedient for the nationalization of all vessels owned by actual residents of said ceded territory on and since the twentieth day of June, anno Domini eighteen hundred and sixty-seven, and which shall continue to have been so owned up to the date of such nationalization, and that from any deputy collector of customs upon whom there has been or shall hereafter be conferred any of the powers of a collector under and by virtue of the twenty-ninth section of the "Act further to prevent smuggling, and for other purposes," approved July eighteen, eighteen hundred and sixty-six, the Secretary of the Treasury shall have power to require bonds in favor of the United States in such amount as the said Secretary shall prescribe for the faithful discharge of official duties by such deputy.

Coasting trade of said territory, how regulated.
R. S., 4358, p. 842.
Reference same as sec. 11.

SEC. 12. The coasting trade between the said territory and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.

Feb. 14, 1903.

32 Stat. L., p. 829.
Authority of Secretary of the Treasury over shipping, etc., transferred.

SEC. 13. All duties, power, authority, and jurisdiction, whether supervisory, appellate, or otherwise, now imposed or conferred upon the Secretary of the Treasury by acts of Congress relating to merchant vessels or yachts, their measurement, numbers, names, registers, enrollments, licenses, commissions, records, mortgages, bills of sale, transfers, entry, clearance, movements and transportation of their cargoes and passengers, owners, officers, seamen, passengers, fees, inspection, equipment for the better security of life, and by acts of Congress relating to tonnage tax, boilers on steam vessels, the carrying of inflammable, explosive or dangerous cargo on vessels, the use of petroleum or other similar substances to produce motive power and relating to the remission or refund of fines, penalties,



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forfeitures, exactions, or charges incurred for violating any provision of law relating to vessels or seamen or to informer's shares of such fines, and by acts of Congress relating to the commissioner and Bureau of Navigation, shipping commissioners, their officers and employees, Steamboat-Inspection Service and any of the officials thereof, shall be, and hereby are, transferred to and imposed and conferred upon the Secretary of Commerce and Labor from and after the time of the transfer of the Bureau of Navigation, the shipping commissioners, and the Steamboat-Inspection Service to the Department of Commerce and Labor, and shall not thereafter be imposed upon or exercised by the Secretary of the Treasury. And all acts or parts of acts inconsistent with this act are, so far as inconsistent, hereby repealed.

Repeal of inconsistent laws.

May 12, 1906.
34 Stat. L., p. 190.

SEC. 14. The seacoasts and navigable rivers of the United States and Porto Rico shall be divided into five great districts—the first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Porto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii.

New coasting districts established.

NOTE.—See treaty with Great Britain, Japan, and Russia, December 15, 1911. (See page 209, supra.) For general laws see Revised Statutes of United States.

## CHAPTER TWO.

### AIDS TO NAVIGATION.

Sec.
15. Life-saving district and stations.
16. Coast and geodetic surveys. Maps.
17. Lighthouses, buoys, etc.
18. Inspection districts established.
19. Board of local inspectors of steam vessels.
20. Government wharf.

Mar. 1, 1905.

SEC. 15. The Secretary of the Treasury be, and he is hereby, authorized to establish a life-saving station at Nome, Alaska, at such point as the general superintendent of the Life-Saving Service may recommend, the life-saving boats and apparatus placed there under the authority of the act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and two, to form a part of the equipment of said station. That the thirteenth life-saving district is hereby extended to include the coast of Alaska.

Nome, Alaska, Life-Saving Station established at.
Thirteenth district extended.
33 Stat. L., p. 819.

Washington and Alaska.

SEC. 16. For the construction of a series of charts of the coast and waters between the State of Washington and the Territory of Alaska, including the reduction of the accumulated data relating to the currents and meteorology of the adjacent ocean, $12,000.

Charts of coasts, etc.
30 Stat. L., 302.

NOTE.—For other special appropriations, see 30 Stat. L., pp. 19 and 605; 31 Stat. L., 1143; 32 Stat. L., 436 and 1098; 33 Stat. L., 470 and 1174; 34 Stat. L., 714 and 1322; 35 Stat. L., 335. For further particulars as to Coast and Geodetic Survey charts, maps, etc., apply to the Bureau of Navigation, Department of Commerce and Labor.

June 17, 1910.

SEC. 17 (Thirteenth Lighthouse District). Additional aids to navigation in Alaskan waters, at a cost not to exceed $60,000.

Alaskan waters. Additional aid.
36 Stat. L., 537.

NOTE.—For other special appropriations for lighthouses, etc., see 31 Stat. L., 595 and 1140; 32 Stat. L., 433 and 1095; 34 Stat. L., 713 and 1320; 35 Stat. L., 334; also see for general appropriations for lighthouses, etc., Stat. L., or apply to the Lighthouse Board, Department of Commerce and Labor.

Apr. 9, 1906.

SEC. 18. There shall be in each of the following collection districts, namely—Juneau, Alaska; Saint Michael, Alaska; one inspector of hulls and one inspector of boilers.

Inspection districts.
34 Stat. L., 106.

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Apr. 21, 1898.

Board of local inspectors of steam vessels.

30 Stat. L., 360.

R. S., 4414, amended.

SEC. 19. That section forty-four hundred and fourteen of the Revised Statutes of the United States, as amended by the act of Congress approved March first, eighteen hundred and ninety-five, chapter one hundred and forty-six, third session Fifty-third Congress (page six hundred and ninety-nine, volume twenty-eight, United States Statutes at Large), be amended by inserting the word "Alaska" in the last line of the third paragraph of said act, after the word "Alabama" and preceding the word "and."

NOTE.—R. S., secs. 4399–4462, provide for the inspection of and makes regulations for steam vessels.

By act of 1895, March 1, ch. 146, amending R. S., sec. 4414, the number and salaries of local inspectors of hulls and boilers are fixed.

June 11, 1896.

29 Stat. L., 413.

Alaska.

Government wharf.

*Proviso.*

Charges.

Regulations.

SEC. 20. Government wharf in Alaska: For reconstructing or repairing and putting in safe and proper condition the wharf at Sitka, Alaska, five thousand dollars, to be immediately available: *Provided*, That hereafter the Secretary of the Treasury be authorized to charge and fix the rates of dockage and wharfage to be paid by any private vessel or person allowed to use said wharf, the said receipts to be deposited with the Treasurer of the United States as a miscellaneous receipt derived from Government property; and the Secretary of the Treasury shall direct, by regulation or otherwise, by whom said wharfage and dockage receipts shall be collected.

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# CHAPTER THREE.

## REGULATIONS AFFECTING NAVIGATION.


Sec.

21. Report by masters of foreign vessels.
22. Remission of fines, penalties, and forfeitures incurred in Alaska.
23. Remission of fines, rules and proceedings.
24. Metlakahtla Indians may be masters and pilots.
25. Relief of American seamen. (See note.)


Feb. 17, 1898.

30 Stat. L., 248.

2d Supp R. S., 720.

Report by masters of foreign vessels.

Permits.

Substitute for R. S., 3109.

To apply to Alaska.

SEC. 21. "The master of any foreign vessel, laden or in ballast, arriving, whether by sea or otherwise, in the waters of the United States from any foreign territory adjacent to the northern, northeastern, or northwestern frontiers of the United States, shall report at the office of any collector or deputy collector of the customs, which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not transfer her cargo or passengers to another vessel or proceed farther inland, either to unlade or take in cargo, without a special permit from such collector or deputy collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. This section shall also apply to trade with or through Alaska. For any violation of this section such vessel shall be seized and forfeited."

Remission of fines, penalties, and forfeitures incurred in Alaska.

1797, ch. 13. Vol. 1, p. 506.

July 27, 1868.

15 Stat. L., 242.

SEC. 22. In all cases of fine, penalty, or forfeiture, mentioned and embraced in the act entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned," or mentioned in any act in addition or amendatory of said act, that have occurred or may occur in said collection district of Alaska, the Secretary of the Treasury be, and he is hereby, authorized, if in his opinion the said fine, penalty, or forfeiture was incurred without willful negligence or intention of fraud, to ascertain the facts in such manner and under such regulations as he may deem proper without regard to the provisions of the act above referred to, and upon the said facts so to be ascertained as aforesaid he may exercise all the power of remission conferred upon him by said act, as fully as he might have done had said facts been ascertained under and according to the provisions of said act.



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July 27, 1868.

Remission of fines, rules, and proceedings.
15 Stat. L., 227.

SEC. 23. The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

R. S., 5293, p. 1027.

If the fine, penalty, or forfeiture was imposed by authority of any provisions of law for levying or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and the case arose within the collection district of Alaska, or was imposed by virtue of any provisions of law relating to fur seals upon the islands of Saint Paul and Saint George.

1 July, 1870, c. 189, s. 7, v. 16, p. 182.
U. S. *v.* Morris, 10 Wh., 246; McLane *v.* U. S., 6 Pet., 404.

Mar. 4, 1907.
[S. 8299.]
[Public, No. 264.]
34 Stat. L., 1411.
Alaska.
Certain civic rights conferred on the Metlakahtla Indians of.

SEC. 24. That all Indians of the Tsimpsean or Haida tribe of the full or mixed blood who emigrated from British Columbia and settled at Metlakahtla on Annette Island, in southeastern Alaska, in the year eighteen hundred and eighty-seven and subsequent years, as well as all descendants of such Indians, and all other Indians who have since become and remained bona fide residents of said Metlakahtla, Alaska, shall, if otherwise qualified, be entitled to receive and obtain licenses as masters, pilots, and engineers, as the case may be, of any and all steamboats and other craft, and also licenses as operators of motor boats and other craft, subject to the provisions of the act of Congress approved May sixteenth, nineteen hundred and six, entitled "An act to amend section forty-four hundred and twenty-six of the Revised Statutes of the United States, regulation of motor boats," with the same force and effect as if they had been citizens of the United States; any such Indian may be the owner of any such motor boat or other craft, subject to the provisions of the said act of May sixteenth, nineteen hundred and six, although such Indian be not a citizen of the United States, without depriving said motor boat or other craft of the benefits and privileges of a vessel of the United States.

May be licensed as masters, pilots, etc.

Pub. Laws, 1st sess., p. 194.

R. S., sec. 4426, p. 858.

May own motor boats, etc.

Certificate of eligibility.

That a certificate under the hand of any officer of the customs in Alaska, to the effect that the applicant for one of the different licenses mentioned in this section comes within one of the provisions of said first paragraph of this section shall, together with the affidavit of the applicant to that effect, be sufficient evidence of the fact that said applicant is entitled to the privileges conferred upon said Indians by the first paragraph of this section.

Effect.

That this act shall take effect and be in force from and after its passage.

Mar. 3, 1911.
36 Stat. L., 1036.
Relief of American seamen.

SEC. 25. Relief and protection of American seamen in foreign countries, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Panama Canal Zone, and the Philippine Islands, thirty thousand dollars.

NOTE.—For prior appropriations, see Statutes at Large, or write the Bureau of Navigation, Department of Commerce and Labor.

As to procurement of statistics of trade between the United States and its noncontiguous territory, including Alaska, see act of April 29, 1902, chap. 637, 32 Stat. L., 172.

For navigation laws of the United States, see General Statutes, or apply to the Bureau of Navigation, Department of Commerce and Labor. Compiled and published in book form in 1911.

For information as to lighthouses and other aids to navigation in Alaskan waters, apply to Lighthouse Board and Coast and Geodetic Survey, Department of Commerce and Labor.

For laws and regulations governing steamboat inspection, apply to Board of Supervising Inspectors, Department of Commerce and Labor.

For suggestions as to amendments to navigation laws and statistical tables, see Annual Report of the Commissioner of Navigation.

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# TITLE III.

## TRANSPORTATION.


| Chap. | | Sec. |
|---|---|---|
| 1. | Postal service | 26 |
| 2. | Telegraph and telephone service | 27 |
| 3. | Roads, trails, and bridges (toll roads and bridges) | 29 |
| 4. | Railroads (general laws and special acts) | 47 |


## CHAPTER ONE.

### POSTAL SERVICE.

(Post Office Department.)

May 12, 1910.

36 Stat. L., 361.

Transportation.

Star routes.

*Provisos.*

Discontinuance if served by rural delivery.

Alaska emergency service.

SEC. 26. For inland transportation by star routes, including temporary service to newly established offices, seven million one hundred and seventy thousand dollars: *Provided*, That no part of this appropriation shall be expended for continuance of any star-route service the patronage of which shall be served entirely by the extension of rural delivery service, nor shall any of said sum be expended for the establishment of new star-route service for a patronage which is already entirely served by rural delivery service: *Provided*, That out of this appropriation the Postmaster General is authorized to provide difficult or emergency mail service in Alaska, including the establishment and equipment of relay stations, in such manner as he may think advisable without advertising therefor.

NOTE.—For appropriations, see annual appropriations for Post Office Department.

Number of routes, 89; length of routes, 17,827 miles; annual expenditure, $456,961.

See Second Assistant Postmaster General's report, June 30, 1910.

Number of post offices, June 1, 1911, 149. (See U. S. Official Postal Guide, July, 1911; also for names of post offices.)

#### TRANSPORTATION OF MAILS.

*Alaska, dispatch of mails for.*—All mails for Alaska are dispatched from Seattle, Wash. During the season of navigation all classes of mail are forwarded. During the winter season (from about October 1 to June 1), on account of the difficulty of transportation, the dispatch of mail for Alaska, except for offices on the southern coast, is limited, preference being given, first, to letters in their usual and ordinary form and postal cards; second, to single newspapers addressed to public libraries, newspaper publishers, and to individuals. Books, catalogues, newspapers, and periodicals sent to dealers for purposes of trade or otherwise, and merchandise, can not be forwarded to interior offices during the winter season. But, as an exception to the foregoing, when the weight limit of mail for dispatch will permit, packages of seeds, not exceeding one pound per package, and articles of merchandise, not exceeding a few ounces each, as the proper officers of the service have reason to believe



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contain articles of urgent necessity, such as eyeglasses, medicines, etc., for individual use, but not intended primarily for trade, may be included in the mails for dispatch.

REGISTERED MAIL FOR ALASKA AND YUKON TERRITORIES DURING THE SUMMER MONTHS.

Postmasters are informed that from June 7, 1911, until the closing of the open (summer) season all classes of mailable matter for any part of Alaska or the Yukon District of Canada may be accepted for registration. (See U. S. Official Postal Guide, July, 1911, p. 16.)

REGISTERED MATTER FOR ALASKA DURING WINTER MONTHS.

Postmasters are reminded that during the winter months, October 1st to May 1st, the articles permissible in mails for the post offices in Alaska mentioned below are restricted to:

(*a*) Letters (in their usual and ordinary form); post cards, singly wrapped newspapers and periodicals from office of publication, addressed to public libraries, to newspapers publishers, and to individual subscribers; transient newspapers, and third-class matter of all kinds, except books, trade catalogues, circulars and patterns, and samples of merchandise.

(*b*) The articles excluded are newspapers and periodicals sent to dealers for purposes of trade (in bulk or otherwise); sample copies of newspapers and periodicals; books; trade catalogues; circulars and patterns, and samples of merchandise; and fourth-class matter (merchandise).

The offices in Alaska referred to are:

| | | | |
|---|---|---|---|
| Anvik. | Dempsey. | Kemperville. | Quinhagak. |
| Barrow. | Dome. | Kennecott. | Rampart. |
| Berry. | Eagle. | Kokrines. | Richardson. |
| Bethel. | Eldorado. | Koserefsky. | Saint Michael. |
| Bettles. | Elliott Creek. | Kotsina. | Salchaket. |
| Candle. | Engineer. | Kotzebue. | Shelton. |
| Caro. | Eureka. | Meehan. | Shungnak. |
| Chatanika. | Fairbanks. | Miller House. | Solomon. |
| Chena. | Fort Yukon. | Nation. | Steel Creek. |
| Chicken. | Fox. | Nenana. | Tanana. |
| Circle. | Franklin. | Nizina. | Taylor. |
| Cleary. | Gilmore. | Nolan. | Teller. |
| Coldfoot. | Golovin. | Nome. | Tofty. |
| Copper Center. | Gulkana. | Nulato. | Tolovana. |
| Council. | Hot Springs. | Nushagak. | Tonsina. |
| Dahl. | Innoko. | Olness. | Unalakleet. |
| Deadwood. | Jackwade. | Ophir. | Wales. |
| Deering. | Kaltag. | Park. | Washburn. |

(*c*) Postmasters should inform the senders of registered matter, other than letters in their usual and ordinary form, that such matter is liable to be delayed in transit if the letter mail available for dispatch entirely exhausts the limit of weight of matter which the contractor is required to transport on each trip.

(*d*) These restrictions do not apply to mail coming from Alaska, as ordinarily all classes of mail may be brought from interior Alaskan points during the winter season.

(*e*) In making up the mail for dispatch on any trip preference will be given to letters in their usual and ordinary form. Of the available excess between the weight of the letters and the maximum weight allowed by the contract not exceeding 10 per cent may be devoted to carrying (1st) packages of seeds, not exceeding one pound per package, and (2d) such small packages of merchandise, not exceeding a few ounces each, as the proper officers of the service have reason to believe contain articles of urgent necessity, such as eyeglasses, medicine, etc., for individual use, but not intended primarily for trade. No dispatch of mail shall include more than one such package of seeds or merchandise to any one individual, firm, or corporation. The remainder of the available weight will be devoted to carrying separately wrapped and addressed copies of newspapers and magazines, but not including newsdealers' packages. (See U. S. Official Postal Guide, July, 1911, p. 122.)

medicine, etc., for individual use, but not intended primarily for trade. No

The above regulations all subject to change by Postmaster General.

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# CHAPTER TWO.

## TELEGRAPH AND TELEPHONE SERVICE.

(War Department.)

Sec.
27. Military telegraph and cable lines. Foreign cables, etc., excluded.
28. Control and maintenance of military telegraph and cable lines.

May 26, 1900.
31 Stat. L., 206.
Military telegraph and cable lines, Alaska.
Provisos.

SEC. 27. For the purpose of connecting headquarters, Department of Alaska, at Saint Michael, by military telegraph and cable lines with other military stations in Alaska, four hundred and fifty thousand five hundred and fifty dollars: *Provided*, That commercial business may be done over these military lines under such conditions as may be deemed, by the Secretary of War, equitable and in the public interests; all receipts from such commercial business shall be accounted for and paid into the Treasury of the United States, and that the sum hereby appropriated shall be immediately available: *Provided further*, That no telegraph or cable lines owned or operated or controlled by persons not citizens of the United States, or by any foreign corporation or government, shall be established in or permitted to enter Alaska.

—public business.

—foreign cables, etc., excluded.

SEC. 28. Control and maintenance:

Oct. 1, 1890.
26 Stat. L., 653.
Control and maintenance.

The act of Congress approved October 1, 1890, section 2, directs that the Chief Signal Officer shall have charge, under direction of the Secretary of War, of * * * "the construction, repair, and operation of military telegraph lines," * * * "and the duty of collecting and transmitting information for the Army by telegraph or otherwise."

In construing this law it has been decided that (U. S. Military Laws, ed. 1901, p. 463) "the act of October 1, 1890 (Stat. L., 653, par. 1227), which places the Chief Signal Officer in charge of 'construction, repair, and operation of military telegraph lines,' repealed the act of August 7, 1882 (22 Stat. L., 319), which vested the supervision of the construction and operation of military telegraph lines in department commanders."

NOTE.—For offenses concerning telegraph and telephone service, see Criminal Code, chapter 11, secs. 2044–2052.

The mileage of land lines and cables and the number of radio stations on June 30, 1912, were as follows:

| | Miles. |
|---|---|
| Land lines | 1,064.5 |
| Cables | 2,621 |
| Radio stations | 10 |

# CHAPTER THREE.

## ROADS, TRAILS, AND BRIDGES.

(War Department toll roads and bridges; Department of the Interior.)

Sec.
29. Road commissioners provided for and their duties.
30. Road funds provided from license fees.
31. Appropriation for construction and maintenance of roads, 1911.
32. Appropriation for construction and maintenance of roads, 1910. (See note for preceding years.)
33. Appointment of road overseers by commissioners.
34. Term of office and qualifications of road overseers.
35. Duties of road overseers.
36. Male persons between 18 and 50 to do two days' road work.
37. Annual report by overseers and penalty for refusal to perform duties.
38. Per diem paid for overseers.
39. Copies of road laws to be furnished to overseers.

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Sec.
40. Right of way for toll roads, tramways, etc.
41. Recording of mortgages and mechanics' liens.
42. Government reservations.
43. Transfer of right of way; right to amend or repeal reserved.
44. Indication of location on profile map; surveyed lands; unsurveyed.
45. Act authorizing Cape Nome Transportation, Bridge, etc., Co.
46. Act authorizing Union Pioneer Mining & Trading Co. to bridge Catalla Creek and collect toll.

May 14, 1906.

34 Stat. L., 192. Prior act Jan. 27, 1905. 33 Stat. L., 616.

Construction of wagon roads.

Appointment of road commissioners.

Retired officers may serve as road commissioners.

Mar. 3, 1911.

36 Stat. L., 1052.

SEC. 29. There shall be a board of road commissioners in said district, to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said district and to be designated by the Secretary of War: *Provided*, That hereafter the Secretary of War may, in his discretion, assign suitable retired officers of the Army to active duty as members of the board of road commissioners for Alaska, and in the case of any officer so assigned the provisions of so much of the act of Congress approved April twenty-third, nineteen hundred and four, entitled 'An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and five, and for other purposes,' as relates to the assignment of retired officers to active duty shall apply. The said engineer officer shall, during the term of his said detail and appointment, abide in said district. The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, and whenever more than twenty thousand dollars, in the aggregate, shall have to be expended upon the actual construction of any road or section of road designed to be permanent, contract for the work shall be let by them to the lowest responsible bidder, upon sealed bids, after due notice, under rules and regulations to be prescribed by the Secretary of War. The board may reject any bid if they deem the same unreasonably high or if they find that there is a combination among bidders. In case no responsible and reasonable bid can be secured, then the work may be carried on with material and men procured and hired by the board, The engineer officer of the board shall in all cases supervise the work of construction and see that the same is properly performed. As soon as any road or trail laid out by the board has been constructed and completed they shall examine the same and make a full and detailed report of the work done on the same to the Secretary of War, and in such report they shall state whether the road or trail has been completed conformably to the maps, plans, and specifications of the same. It shall be the duty of said board, as far as practicable, to keep in proper repair all roads and trails constructed under their supervision, and the same rules as to the manner in which the work of repair shall be done, whether by contract or otherwise, shall govern as in the case of the original construction of the road or trail. The cost and expenses of laying out, constructing, and repairing such roads and trails shall be paid by the Secretary of the Treasury, through the authorized disbursing officer of the board designated by the Secretary of War, out of the road and trail

Powers.

May 14, 1906.

34 Stat. L., pt. 1, p. 192. Prior act Jan. 27, 1905. 33 Stat. L., 616, amended.

Maps, etc.

Bids when actual construction cost aggregates over $20,000.

Disbursements.

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portion of said 'Alaska fund' upon vouchers approved and certified by said board. The Secretary of the Treasury shall, at the end of each month, send by mail to each of the members of said board a statement of the amount available of said 'Alaska fund' for the construction and repair of roads and trails, and no greater liability for construction or repair shall at any time be incurred by said board than the money available therefor at that time in said fund. The members of said board shall, in addition to their salaries, be reimbursed in the sums actually paid or incurred by them in traveling expenses in the performance of their duties, and shall be entitled to receive their actual expenses of living while serving as members of said board within the limits of the district and not stationed at a military post.

Reimbursement for actual expenses, etc.

NOTE.—Amends Charlton Code, pp. 111 and 474, secs. 5978, 5979, 5980, and 5981.

May 14, 1906.

34 Stat. L., 192.

Liquor, occupation, trade, etc., license fees outside incorporated towns to constitute the "Alaska fund."

SEC. 30. That all moneys derived from and collected for liquor licenses, occupation or trade licenses outside of the incorporated towns in the District of Alaska shall be deposited in the Treasury Department of the United States, there to remain as a separate and distinct fund, to be known as the "Alaska fund," and to be wholly devoted to the purposes hereinafter stated in the District of Alaska. One-fourth of said fund, or so much thereof as may be necessary, shall be devoted to the establishment and maintenance of public schools in said district; five per centum of said fund shall be devoted to the care and maintenance of insane persons in said district, or so much of said five per centum as may be needed; and all the residue of said fund shall be devoted to the construction and maintenance of wagon roads, bridges, and trails in said district: *And provided further*, That the clerk of the court of each judicial division of said district is authorized, and he is hereby directed, whenever considered necessary, to call upon the United States marshal of said judicial division to aid in the collection of said license moneys by designating regular or special deputies of his office to act as temporary license inspectors, and it shall be the duty of said United States marshal to render such aid; and the said regular or special deputies, while actually engaged in the performance of this duty, shall receive the same fees and allowances and be paid in the same manner as when performing their regular duties.

Use of fees.

Prior act (see 33 Stat. L., 616) amended.

Road funds provided.

*Proviso.*

Collection of license fees.

Marshal's deputies to act as license inspectors.

Fees.

Amends Charlton Code, pp. 110 and 474, sec. 5977.

NOTE.—For license laws of Alaska, see act of March 3, 1899 (30 Stat. L., 1336), and amendments.

For the repeal of the five per centum appropriation of license money for care of insane and adding it to the appropriation for schools, see 35 Stat. L., 601.

Mar. 3, 1911.

36 Stat. L., 1052.

Alaska.

Military and post roads, etc.

Vol. 33, p. 616.

SEC. 31. Construction and maintenance of military and post roads, bridges, and trails, Alaska: For the construction and maintenance of military and post roads, bridges, and trails in the District of Alaska, to be expended under the direction of the board of road commissioners described in section twenty-nine of an act entitled "An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved January twenty-seventh, nineteen hundred and five, and to be expended conformably to the provisions of said act, one hundred and fifty thousand dollars, to remain available until the close of the fiscal year ending June thirtieth, nineteen hundred and thirteen.

Mar. 23, 1910.

36 Stat. L., 257.

Alaska.

Military and post roads, etc.

SEC. 32. Construction and maintenance of military and post roads, bridges, and trails, Alaska: For the construction and maintenance of military and post roads, bridges, and trails in the District of Alaska, to be expended under the direction of the board of road

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Vol. 33, p. 616.

commissioners described in section twenty-nine of an act entitled "An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved January twenty-seventh, nineteen hundred and five, and to be expended conformably to the provisions of said act, one hundred thousand dollars, to remain available until the close of the fiscal year ending June thirtieth, nineteen hundred and twelve.

NOTE.—For prior appropriations, see 35 Stat. L., 746, March 3, 1909, $350,000; 35 Stat. L., 120, May 11, 1908, $250,000; 34 Stat. L., 254, June 12, 1906, $150,000; 34 Stat. L., 316, June 20, 1906, $35,000 for preliminary survey of land routes from the navigable waters of the Tanana River at or near Fairbanks to the vicinity of Council City, in the Seward Peninsula; 34 Stat. L., 1171, March 2, 1907, $250,000; 33 Stat. L., 1225, March 3, 1905, survey for wagon road from Valdez to Fort Egbert, $5,700, also for survey of road or trail between the Yukon River and Coldfoot, on the Koyukuk River, $1,431; 33 Stat. L., 271, April 23, 1904, appropriation for survey and building of same roads as mentioned in preceding appropriation, $27,500; 32 Stat. L., 517, June 30, 1902, appropriation for construction of roads and bridges, $100,000; 31 Stat. L., 214, May 26, 1900, same appropriation as the preceding appropriation.

In addition to these special appropriations for roads, bridges, and trails in Alaska, receipts from the license fund provided for in section 3 have averaged to July, 1912, about $120,000 a year.

The total amount expended to date by the Board of Road Commissioners for Alaska for roads, bridges, and trails, including surveys of location and maintenance from year to year during the existence of the board approximates $2,215,000.

Roads and trails have been constructed by the board as follows:

| | Miles. |
|---|---|
| Wagon roads | 829 |
| Winter sled roads | 599 |
| Trails | 1,552 |

In addition to the above, the board marks each winter with guide stakes carrying flags several hundred miles of trail for the guidance of travelers over treeless and exposed sections of the Territory.

Apr. 27, 1904.
33 Stat. L., 391–394.
Alaska.
Appointment of road overseers, etc., authorized.

SEC. 33. It shall be the duty of the commissioner in each precinct in the District of Alaska, on the first Monday in the month of April in each year, to appoint a road overseer for the precinct in which he resides, and create a road district in the inhabited part of said precinct, which said district shall not include incorporated cities and towns.

Vacancies.

To fill all vacancies in the office of road overseer in his precinct.

Record of road boundaries.

To cause a record to be made defining the boundaries of said road district.

Amends Charlton Code, pp. 101 and 469, sec. 5955.

Road overseers.
Term.

SEC. 34. Term of office and qualification of road overseers:

All road overseers shall hold office for one year and until their successors are appointed and qualified.

Residence.

Every person appointed to the office of road overseer of any road district shall reside in the road district to which he has been appointed, and shall, within thirty days after he shall have been notified of his appointment, take and subscribe to an oath of office obligating himself to the faithful performance of the duties of his office, and shall forthwith cause such oath to be filed in the office of the commissioner of his precinct, and in case any such road overseer shall become nonresident of his road district, his office shall at once become vacant.

Oath.

Bond.

Each road overseer shall, before entering upon the duties of his office, execute a bond to the United States in a sum not less than double the amount of money which will probably come into his hands at any time during his term of office, with two or more sureties, the amount and sufficiency of the bond to be approved by the commissioner of the precinct, conditioned for the faithful discharge of the duties of his office, which bond shall be by him forthwith filed in the

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office of the commissioner and ex officio recorder. The approval of such bond shall be indorsed thereon by the commissioner.

Charlton Code, pp. 102, 469, and 470, secs. 5956, 5957.

Duties.

SEC. 35. Duties of road overseer:

The duties of road overseer shall be such as may be prescribed by law.

Accounts.

Each road overseer shall keep an accurate account of all money received by virtue of his office and the manner in which the same has been disbursed, and to whom, and shall, on the last Saturday of March in each year, exhibit such account, together with his vouchers, to the commissioner for adjustment and settlement. Such account shall be in writing, verified by affidavit of the overseer that the same is in all respects a full and true account of all money received by him during the full term for which he should make settlement and the amounts expended and the manner in which they were expended.

Refusal to serve. Penalty.

If any person appointed to the office of road overseer, unless unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein, he shall be liable to a fine of twenty-five dollars; but no person so appointed who shall have served for a term next preceding such appointment shall be liable to such fine for refusing to serve if he shall have given notice in writing of refusal to the commissioner within twenty days after having been notified of his appointment.

Notice of refusal.

Refusal to deliver funds, records, etc.

Every road overseer who shall, after the expiration of his term of office, neglect or refuse to deliver on demand to his successor in office, after such successor shall have been duly qualified according to law, all moneys, records, books, papers, or other property appertaining to such office shall be liable to a fine of not less than fifty nor more than five hundred dollars.

Penalty.

Charlton Code, pp. 102, 470, secs. 5958, 5959.

Two days' work on roads, etc., required of male residents.

SEC. 36. Road overseers of the different precincts are authorized, and it is made their duty, to warn out all male persons between eighteen and fifty years of age who have resided thirty days in the district of Alaska, who are capable of performing labor on roads or trails, and who are not a precinct charge, to perform two days' work of eight hours each in locating, constructing, or repairing public roads or trails, under the direction of the road overseer within whose precinct they may respectively reside, or furnish a substitute to do the same, or pay the sum of four dollars per day for two days' labor, and said road overseer shall receipt for the same and shall expend it in location, construction, or repairs on the public roads and trails within his precinct; and any moneys so received and not expended shall be paid over to his successor in office, who shall expend the same as above provided.

Substitute.

Payment in lieu of labor.

Notice.

The overseer of roads and trails in each precinct shall give notice to persons residing in his precinct liable to or charged with a road or trail tax of the time and place and the kind of work expected to be performed on the road or trail, and may direct what implements such persons shall bring with which to perform such work.

Failure to work on account of sickness, etc.

Whenever it shall happen, in consequence of sickness or absence from home, or any other cause, that the two days' work aforesaid shall not be performed within the time specified in this act, the overseer shall be authorized to require the performance of such work at any time prior to the first day of October then next ensuing; and in case any person shall neglect or refuse to do the two days' work, or furnish a substitute, or pay in money the price of two days' labor, as provided in this act, he shall be deemed guilty of a misdemeanor and shall be fined in the sum of ten dollars for each day refusing so to work, upon conviction before any justice of the peace of the precinct.

Penalty.

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Refusal to work. If any person shall appear at the proper time and place as directed by the overseer and neglect or refuse to do a reasonable day's work according to his ability, he shall be liable the same as if he had neglected or refused to appear, or furnish a substitute, or pay the sum of money as provided herein.

Tax paid by one day's work. Condition. Under the direction of the overseer, and at his discretion, the above road tax may be performed by one day's work, together with an able-bodied man, a two-horse team with wagon, or a dog team consisting of not less than five dogs and a sleigh, or a reindeer team of not less than two reindeer and sleigh or cart.

Receipt. It shall be the duty of each road overseer to receipt to each person who performs labor on the public roads and trails of his precinct under the provisions of this act for the amount of labor so performed; and no person shall be compelled to pay road tax except in one precinct in the district of Alaska during one calendar year.

Double tax prohibited.

Charlton Code, pp. 102, 103 and 470, 471, secs. 5960, 5961, 5962, and 5963.

Annual report. SEC. 37. Each road overseer shall, on or before the first day of April in each year, report to the commissioner of the precinct the names of all persons subject to the two days' road tax for the preceding year, the names of those who have worked out said tax, the names of those who have paid the said tax in money, and the names of those delinquent, and also all moneys received by him from all sources, and how expended, and the account of said road overseer of the work performed by himself, which report shall be approved by said commissioner before any final settlement shall be made with such road overseer.

Failure of overseers to perform duties. Each and every road overseer who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall, under any pretense whatsoever, give or sign a receipt or certificate for labor performed or money paid unless the labor shall have been performed or money paid prior to the signing or giving of such receipts or certificates, shall forfeit for every such offense not less than five nor more than fifty dollars, to be recovered by an action before any justice of the peace within the precinct where such overseer may reside; and it is hereby made the duty of every United States attorney or assistant to prosecute all offenses against the provisions of this act not otherwise provided for.

Penalty.

Prosecution.

Charlton Code, pp. 103, 471, secs. 5964, 5965

Per diem, overseers. SEC. 38. Per diem:

Road overseers shall be allowed four dollars per day for all services required by this act and actually performed in their respective precincts, to be retained out of money paid said road overseers from persons paying money or fines in lieu of two days' labor, upon the certified statement of the overseers, approved by the commissioner of the precinct: *Provided*, That no overseer shall receive pay for more than ten days in any one year, and not until he has made the return as provided in the preceding section, in duplicate, one copy to be retained by the commissioner and one copy filed with the clerk of the district court in the division in which the said precinct is situated.

*Proviso.* Maximum. Returns.

Oath, etc., to be free of cost. Any oath required to be taken by said overseer, acknowledgment of bond, or the filing or recording of any paper or plat authorized by this act shall be free of cost to said overseer.

Clerk of court to furnish blank forms, etc. Upon application of road overseers it shall be the duty of the clerk of the district court to furnish copies of this act and blank forms of notices warning persons to perform road work, receipts for road work, bond, and oath, and for overseer's report to commissioner, the

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expense of which shall be paid out of the fund for paying the incidental expenses of the court.

Charlton Code, pp. 103, 471, secs. 5966, 5967.

Copies of road laws for use of overseers.

SEC. 39. The Attorney General of the United States is hereby directed to furnish clerks of the district court in the different judicial divisions of Alaska a sufficient number of copies of this act and other road and trail laws that may now be upon the statutes relating to roads and trails in the district of Alaska for use of road overseers in each judicial division.

Charlton Code, p. 103.

NOTE.—See Highways; destroying guide posts, etc., on, and penalty; injuring or destroying and penalty, see criminal code, section 1943.

Location of, by municipal corporations, see civil code, section 627.

Rules of travel upon, see civil code, sections 782–787.

Subject of eminent domain, see civil code, sections 633–658.

Through graveyard, penalty, see criminal code, section 2013.

Way for along navigable waters, see "Navigable waters and land laws," section 96.

Permitting vicious animals to run at large upon, and penalty, see criminal code, section 2023.

Rules for travel upon, by traction engines, see civil code, sections 785–787.

Employer liable for servants' wrong, see civil code, section 784.

Election to sue driver or employer a bar to action against the other, see civil code, section 784.

May 14, 1898.

30 Stat. L., 411.

Right of way for wagon roads and tramways.

SEC. 40. The Secretary of the Interior is hereby authorized to issue a permit, by instrument in writing, in conformity with and subject to the restrictions herein contained, unto any responsible person, company, or corporation, for a right of way over the public domain in said District, not to exceed one hundred feet in width, and ground for station and other necessary purposes, not to exceed five acres for each station for each five miles of road, to construct wagon roads and wire rope, aerial, or other tramways, and the privilege of taking all necessary material from the public domain in said District for the construction of such wagon roads or tramways, together with the right, subject to supervision and at rates to be approved by said Secretary, to levy and collect toll or freight and passenger charges on passengers, animals, freight, or vehicles passing over the same for a period not exceeding twenty years, and said Secretary is also authorized to sell to the owner or owners of any such wagon road or tramway, upon the completion thereof, not to exceed twenty acres of public land at each terminus at one dollar and twenty-five cents per acre, such lands when located at or near tide water not to extend more than forty rods in width along the shore line and the title thereto to be upon such expressed conditions as in his judgment may be necessary to protect the public interest, and all minerals, including coal, in such right of way or station grounds shall be reserved to the United States: *Provided*, That such lands may be located concurrently with the line of such road or tramway, and the plat of preliminary survey and the map of definite location shall be filed as in the case of railroads and subject to the same conditions and limitations: *Provided further*, That such rights of way and privileges shall only be enjoyed by or granted to citizens of the United States or companies or corporations organized under the laws of a State or Territory; and such rights and privileges shall be held subject to the right of Congress to alter, amend, repeal, or grant equal rights to others on contiguous or parallel routes. And no right to construct a wagon road on which toll may be collected shall be granted unless it shall first be made to appear to the satisfaction of the Secretary of the Interior that the public convenience requires the construction of such proposed road, and that the expense of making the same available and convenient for public travel will not be less on an average than five

Use of material.

Toll.

Land at termini.

Minerals reserved.

*Provisos.*
—location of, etc.

Rights of way, to whom granted.

—amendment of, etc.

—conditions.

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Location on existing road, etc.

Collection of toll.

—only on written authority.

—printed copies to be posted.

—penalty.

hundred dollars per mile: *Provided*, That if the proposed line of road in any case shall be located over any road or trail in common use for public travel, the Secretary of the Interior shall decline to grant such right of way, if, in his opinion, the interests of the public would be injuriously affected thereby. Nor shall any right to collect toll upon any wagon road in said District be granted or inure to any person, corporation, or company until it shall be made to appear to the satisfaction of said Secretary that at least an average of five hundred dollars per mile has been actually expended in constructing such road; and all persons are prohibited from collecting or attempting to collect toll over any wagon road in said District, unless such person or the company or person for whom he acts shall at the time and place the collection is made or attempted to be made possess written authority, signed by the Secretary of the Interior, authorizing the collection and specifying the rates of toll: *Provided*, That accurate printed copies of said written authority from the Secretary of the Interior, including toll, freight, and passenger charges thereby approved, shall be kept constantly and conspicuously posted at each station where toll is demanded or collected. And any person, corporation, or company collecting or attempting to collect toll without such written authority from the Secretary of the Interior, or failing to keep the same posted as herein required, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined for each offense not less than fifty dollars nor more than five hundred dollars, and in default of payment of such fine and costs of prosecution shall be imprisoned in jail not exceeding ninety days, or until such fine and costs of prosecution shall have been paid.

Priority to applicants for right of way.

Forfeiture for noncompletion.

No toll on roads in bad condition.

That any person, corporation, or company qualified to construct a wagon road or tramway under the provisions of this act that may heretofore have constructed not less than one mile of road, at a cost of not less than five hundred dollars per mile, or one-half mile of tramway at a cost of not less than five hundred dollars; shall have the prior right to apply for such right of way and for lands at stations and terminals and to obtain the same pursuant to the provisions of this act over and along the line hitherto constructed or actually being improved by the applicant, including wharves connected therewith. That if any party to whom license has been granted to construct such wagon road or tramway shall, for the period of one year, fail, neglect, or refuse to complete the same, the rights herein granted shall be forfeited as to any such uncompleted section of said wagon road or tramway, and thereupon shall revert to the United States without further action or declaration, the notation of such uncompleted section upon the records of the land office shall be canceled, and the reservations of such lands for the purposes of said right of way shall cease and become null and void without further action. And if such road or tramway shall not be kept in good condition for use, the Secretary of the Interior may prohibit the collection of toll thereon pending the making of necessary repairs.

Charlton Code, pp. 57, 58, sec. 6.

Recording of mortgages.

SEC. 41. That all mortgages executed by any company acquiring a right of way under this act, upon any portion of its road that may be constructed in said District of Alaska, shall be recorded with the Secretary of the Interior, and the record thereof shall be notice of their execution, and shall be a lien upon all the rights and property of said company as therein expressed, and such mortgage shall also be recorded in the office of the secretary of the District of Alaska and in the office of the secretary of the State or Territory wherein such

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company is organized: *Provided*, That all lawful claims of laborers, contractors, subcontractors, or material men, for labor performed or material furnished in the construction of the railroad, tramway, or wagon road shall be a first lien thereon and take precedence of any mortgage or other lien. Mechanics' liens.

Charlton Code, p. 58, sec. 6.

SEC. 42. That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by act of Congress. Government reservations.

Charlton Code, p. 58, sec. 7.

SEC. 43. That Congress hereby reserves the right at any time to alter, amend, or repeal this act or any part thereof; and the right of way herein and hereby authorized shall not be assigned or transferred in any form whatever prior to the construction and completion of at least one-fourth of the proposed mileage of such railroad, wagon road, or tramway, as indicated by the map of definite location, except by mortgages or other liens that may be given or secured thereon to aid in the construction thereof: *Provided*, That where within ninety days after the approval of this act, proof is made to the satisfaction of the Secretary of the Interior that actual surveys, evidenced by designated monuments, were made, and the line of a railroad, wagon road, or tramway located thereby, or that actual construction was commenced on the line of any railroad, wagon road, or tramway, prior to January twenty-first, eighteen hundred and ninety-eight, the rights to inure hereunder shall, if the terms of this act are complied with as to such railroad, wagon road, or tramway, relate back to the date when such survey or construction was commenced; and in all conflicts relative to the right of way or other privilege of this act the person, company, or corporation having been first in time in actual survey or construction, as the case may be, shall be deemed first in right. Amendment. Transfer of right of way. *Proviso.* Preference to priority in survey, etc.

Charlton Code, p. 59, sec. 8.

SEC. 44. That the map and profile of definite location of such railroad, wagon road, or tramway, to be filed as hereinbefore provided, shall, when the line passes over surveyed lands, indicate the location of the road by reference to section or other established survey corners, and where such line passes over unsurveyed lands the location thereon shall be indicated by courses and distances and by references to natural objects and permanent monuments in such manner that the location of the road may be readily determined by reference to descriptions given in connection with said profile map. Indication of location on profile map. —surveyed lands. —unsurveyed.

Charlton Code, p. 59, sec. 9.

SEC. 45. That the Cape Nome Transportation, Bridge, and Development Company, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the Territory of Alaska, is hereby authorized and empowered to construct, operate, and maintain a general traffic bridge across the Snake River, to be located at such point within or near the corporate limits of the city of Nome, in said Territory of Alaska, as shall be approved by the Secretary of War: *Provided*, That said bridge shall be constructed as a drawbridge, and the draw shall be opened promptly, upon reasonable signal, for the passage of boats; and, whatever kind of bridge is constructed, the owners thereof shall maintain thereon, at their own expense, from sunset to sunrise, such lights or other signals as the Light-House Board shall prescribe; that such bridge shall be constructed so as to provide for the passage of vehicles and pedestrians, upon the payment of a reasonable compensation for such use. May 4, 1900. 31 Stat. L., pp. 166–167. Cape Nome Transportation, Bridge, etc., co. may bridge Snake River, Alaska. *Proviso.* Draw. Lights. Transit.

That any bridge built under the provisions of this act shall be a lawful structure, and shall be recognized and known as a post route, To be lawful structure and post route.

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upon which no higher charge shall be made for the transmission over the same of the mails, troops, and munitions of war of the United States passing over said bridge than the rate per mile paid for the transportation over the public highways leading to said bridge; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies, and the United States shall have the right of way across said bridge and approaches for postal-telegraph purposes; and said bridge shall be so constructed and operated as not to interfere with the navigation of said river.

Telegraph, etc., companies.

That the said corporation shall have the right to charge and collect a reasonable rate of toll, to be approved by the Secretary of War, not exceeding ten cents for pedestrians, twenty-five cents for animals, and fifty cents for vehicles.

Toll.

That the bridge authorized to be constructed under this act shall be located and built under and subject to regulations for the security of the navigation of said river as the Secretary of War shall prescribe; and to secure that object the said corporation shall submit to the Secretary of War, for his examination and approval, a design and drawings of the proposed bridge and a map of the location, giving, for the space of one-half mile above and one-half mile below the proposed location, the topography of the banks of the river, the shore lines at high and low water, the direction and strength of the currents, and the soundings, accurately showing the bed of the stream, and shall furnish such other information as may be required for a full and satisfactory understanding of the subject; and until the said plan and location of the bridge are approved by the Secretary of War no work upon the bridge shall be commenced; and should any change be made in the plan of said bridge during the progress of construction such change shall be subject to the approval of the Secretary of War; and any changes in said bridge which the Secretary of War may at any time deem necessary and order in the interests of navigation shall be made by the owners thereof at their own expense.

Secretary of War to approve plans.

That this act shall be null and void if actual construction of the bridge herein authorized be not commenced within one year and completed within three years from the date of approval hereof.

Commencement and completion.

That Congress hereby expressly reserves the right to alter, amend, or repeal this act.

Amendment.

Apr. 28, 1904.
[H. R. 6780.]
[Public, No. 244.]
33 Stat. L., 560.

SEC. 46. That the Union Pioneer Mining and Trading Company, a corporation created and existing under and by virtue of the laws of the State of California, be, and it is hereby, authorized to construct and maintain a bridge across the Catalla Creek, in the district of Alaska, to be located at such point as shall be approved by the Secretary of War. Said bridge may be used for the passage of wagons and vehicles of all kinds, and for the transit of animals, and for foot passengers, for such reasonable rates of toll as may be fixed by said company and approved by the Secretary of War.

Catalla Creek, Alaska.
Union Pioneer Mining & Trading Co. may bridge.
Location.
Wagon and foot bridge.
Toll.

That such bridge shall be constructed as a drawbridge, and the draw shall be opened promptly upon reasonable signal for the passage of boats. And whatever kind of bridge is constructed, the said company shall maintain thereon, at its own expense, from sunset to sunrise, during the season of navigation, such lights or other signals as the Light-House Board shall prescribe; and the United States shall have the right of way across said bridge and approaches for postal telegraph and other purposes; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies, and said bridge shall be so constructed and operated as not to interfere with the navigation of said river: *Provided*, That any bridge constructed under this act and according to its limitations shall be a lawful structure and shall be known and recognized as a post route,

Drawbridge.

Lights, etc.

Telegraph, etc., rights.

*Proviso.*
Lawful structure and post route.

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and the same is hereby declared to be a post route, upon which, also, no higher charge shall be made for the transportation over the same of the mails, the troops, or munitions of war of the United States than the rate per mile paid for transportation over railroads or public highways leading to the said bridge.

Secretary of War to approve plans, etc.

That the bridge authorized to be constructed under this act shall be located and built under and subject to such regulations for the security of the navigation of said creek as the Secretary of War shall prescribe; and to secure that object the said corporation shall submit to the Secretary of War, for his examination and approval, a design and drawings of the proposed bridge, and shall furnish such other information as may be required for a full and satisfactory understanding of the subject; and until the said plan and location of the bridge are approved by the Secretary of War no work upon the bridge shall be commenced; and should any change be made in the plan of said bridge during the progress of construction, or after completion, such change shall be subject to the approval of the Secretary of War; and any changes in said bridge which the Secretary of War may at any time deem necessary and order in the interests of navigation shall be made by the said corporation at its own expense.

Changes.

Time of construction.

That this act shall be null and void if actual construction of the bridge herein authorized be not commenced within one year and completed within three years from the date of approval hereof.

Amendment.

That Congress hereby expressly reserves the right to alter, amend, or repeal this act.

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# CHAPTER FOUR.

## RAILROADS.

(Department of the Interior.)


Sec.
47. Right of way, wharves, freight charges, etc.
48. Canyons, interference with wagon roads, regulation of freight charges.
49. Filing plat of preliminary survey, condemnation of right of way.
50. Filing map of definite location, limitation of time of construction; forfeiture for noncompletion, etc.
51. Recording of mortgages; mechanics' liens.
52. Government reservations.
53. Right to amend or repeal act reserved; transfer of right of way; preference to priority in surveys, etc.
54. Indication of location on profile map across surveyed and unsurveyed lands.
55. Transfers for right of way, permitted; contracts before patent issued, void.
56. Congress to authorize construction of bridges over navigable waters; approval of plans, etc.
57. Obstruction to navigation not authorized; works outside harbor lines forbidden; excavations, alterations, etc., in channels only where authorized.

Sec.
58. Establishment of harbor lines. Proviso, compensation for tidewater displaced.
59. Penalties; removal of structures.
60. Bridges; general provisions for constructing, over navigable waters; Secretary of War to approve plans, etc.; modification of plans restricted.
61. Lawful structures and post routes; telegraph, etc., rights.
62. Use by other companies; compensation.
63. Unobstructed navigation; changes; lights, etc.; opening draw; tolls.
64. Noncompliance with regulations a misdemeanor; penalty; litigation.
65. Time of construction.
66. Meaning of "persons."
67. Amendments, etc.
(For laws including civil and criminal codes, see notes under sec. 67.)
68. Akron, Sterling & Northern Railroad; time for construction extended.
69. Western Alaska Construction Co.; time extended for completing road.
70. Exemption from payment of license fee.


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Sec.
71. Council City & Solomon River Railroad; time for construction extended; exemption from payment of license fee.
72. Time for construction extended.
73. Alaska Short Line Railroad Co.; time extended for construction.
74. Time extended for construction.
75. Time extended for construction; rights prior to construction.
76. Alaska Central Railway Co.; time extended for construction; purchase of additional land authorized; exemption from payment of license fee.
77. Time extended for completion.
78. Alaska Pacific Railway & Terminal Co.; authority to construct railroad trestle across Controller Bay.
79. Authority to bridge Copper River at Childs Glacier.
80. Time extended for completion of entire line.
81. Valdez, Marshall Pass & Northern Railroad; time extended for building road; exemption from paying license fee.
82. Second extension of time for completing road and further exemption from payment of license fee.
83. Tanana Mines Railroad Co.; exemption from license fee and tax on its railway property for five years.
84. Controller Railway & Navigation Co.; authority to construct two bridges across Bering River; right of way over tide and shore lands; right to regulate charges reserved.

Creation of railroad commission, sec. 425, Political Code.

May 14, 1898.
30 Stat. L., 409.
Right of way to railroads.
R. S., 5256–5262.

SEC. 47. That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, duly organized under the laws of any State or Territory or by the Congress of the United States, which may hereafter file for record with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to

—width.

the extent of one hundred feet on each side of the center line of said road; also the right to take from the lands of the United States adjacent to the line of said road, material, earth, stone, and timber

Materials for construction.

necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turnouts, water stations,

Stations.
—limit.

and terminals, and other legitimate railroad purposes, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road, excepting at terminals and junction points, which may include additional forty acres, to be limited on navigable waters to eighty rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary

*Provisos.*
Minerals excepted.

of the Interior be necessary where there are heavy cuts or fills: *Provided*, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns the ownership or use of minerals, including coal, within the limits of its right

Mining operations not to interfere with road.

of way, or of the lands hereby granted: *Provided further*, That all mining operations prosecuted or undertaken within the limits of such right of way or of the lands hereby granted shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. And when such

Wharves.

railway shall connect with any navigable stream or tide water such company shall have power to construct and maintain necessary piers and wharves for connection with water transportation, subject to the

Rights of future States.

supervision of the Secretary of the Treasury: *Provided*, That nothing in this act contained shall be construed as impairing in any degree the title of any State that may hereafter be erected out of said District, or any part thereof, to tide lands and beds of any of its navigable waters, or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may here-

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after be erected out of said district. The term "navigable waters," as herein used, shall be held to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary high-water mark. That all charges for the transportation of freight and passengers on railroads in the District of Alaska shall be printed and posted as required by section six of an act to regulate commerce as amended on March second, eighteen hundred and eighty-nine, and such rates shall be subject to revision and modification by the Secretary of the Interior.

"Navigable waters," defined.

Railroad charges to be printed and posted.

Vol. 24, p. 380.

Vol. 25, p. 855.

Charlton Code, p. 55, sec. 2.

NOTE.—In view of the fact that on April 29, 1912, the Supreme Court of the United States, in the case of the Interstate Commerce Commission *v.* United States, ex rel. Humboldt Steamship Co., held, that the interstate commerce act is applicable to Alaska, and that common carriers therein are within the jurisdiction of the Interstate Commerce Commission. Tariff rates are no longer acted on by the Department of the Interior.

NOTE.—Interference of possession of lands containing mineral under homestead law by one claiming under a subsequent mineral location will be restrained by a court of equity until homestead entry is canceled. (Heine *v.* Roth et al., 2 Alaska Rep., p. 416.)

Town councils have not power to grant franchises to individuals to build wharves on the public streets and navigable waters abutting thereon, and collect tolls. Injunction properly granted on petition of private person showing a special injury by closing his free access to street or river. (Conradt *v.* Miller et al., 2 Alaska Rep., p. 433.)

SEC. 48. That any railroad company whose right of way, or whose track or roadbed upon such right of way, passes through any canyon, pass, or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass, or defile for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade; and the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any tramway, wagon road, or other public highway now located therein, nor prevent the location through the same of any such tramway, wagon road, or highway where such tramway, wagon road, or highway may be necessary for the public accommodation; and where any change in the location of such tramway, wagon road, or highway is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such tramway, wagon road, or highway, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road or tramway: *Provided*, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile, and that where the space is limited the United States district court shall require the road first constructed to allow any other railroad or tramway to pass over its track or tracks through such canyon, pass, or defile on such equitable basis as the said court may prescribe; and all shippers shall be entitled to equal accommodations as to the movement of their freight and without discrimination in favor of any person or corporation: *Provided*, That nothing herein shall be construed as depriving Congress of the right to regulate the charges for freight, passengers, and wharfage.

Passage of railroads through canyons, etc.

—interference with wagon roads, etc.

—relocation of.

*Provisos.*

—expenses, etc.

Regulation of freight, etc., charges.

Charlton Code, p. 56, sec. 3.

SEC. 49. That where any company, the right of way to which is hereby granted, shall in the course of construction find it necessary to pass over private lands or possessory claims on lands of the United States, condemnation of a right of way across the same may be made in accordance with section three of the act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and

Appraisal by commissioners of land taken.

Vol. 13, p. 356.

Vol. 12, p. 489.



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other purposes, approved July first, eighteen hundred and sixty-two,'" approved July second, eighteen hundred and sixty-four: *Provided further*, That any such company, by filing with the Secretary of the Interior a preliminary actual survey and plat of its proposed route, shall have the right at any time within one year thereafter, to file the map and profile of definite location provided for in this act, and such preliminary survey and plat shall, during the said period of one year from the time of filing the same, have the effect to render all the lands on which said preliminary survey and plat shall pass subject to such right of way.

*Proviso.* Filing of plat of preliminary survey, etc.

Charlton Code, p. 56, sec. 4.

NOTE.—A railroad company having made a final survey and filed a definite map across public lands, no disposition can be made of the same except subject to right of way. The grant of right of way across public lands takes effect only after the lines have been located upon the grounds. The preliminary lines reserve for one year; the definite lines reserve permanently.

Change of the preliminary lines so that for the first time they are located upon a homestead entry or placer-mining location can only be done with the consent of the homesteader or placer-mine locator or upon condemnation proceedings.

Injunction will not issue to restrain a railroad company from completing its bridge across a nonnavigable slough claimed by plaintiff as a part of his placer-mining location where the title of the land is in dispute and doubtful and where in addition no injury is shown to the claim.

Steele *v.* Tanana Mines Ry. Co., 2d Alaska Rep., 451.

For cases in point, see vol. 41, Cent. Digest, sec. 234.

See also Eighteenth Century Digest, Eminent Domain, secs. 769–773; 1st High on Injunctions, secs. 629, 651, 676, 698, 705, 728, 732.

Maps of definite location.

SEC. 50. That any company desiring to secure the benefits of this act shall, within twelve months after filing the preliminary map of location of its road as hereinbefore prescribed, whether upon surveyed or unsurveyed lands, file with the register of the land office for the district where such land is located a map and profile of at least a twenty-mile section of its road or a profile of its entire road if less than twenty miles, as definitely fixed, and shall thereafter each year definitely locate and file a map of such location as aforesaid of not less than twenty miles additional of its line of road until the entire road has been thus definitely located, and upon approval thereof by the Secretary of the Interior the same shall be noted upon the records of said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, That if any section of said road shall not be completed within one year after the definite location of said section so approved, or if the map of definite location be not filed within one year as herein required, or if the entire road shall not be completed within four years from the filing of the map of definite location, the rights herein granted shall be forfeited as to any such uncompleted section of said road, and thereupon shall revert to the United States without further action or declaration, the notation of such uncompleted section upon the records of the land office shall be canceled, and the reservations of such lands for the purposes of said right of way, stations, and terminals shall cease and become null and void without further action.

*Proviso.* Forfeiture for noncompletion, etc.

Charlton Code, pp. 56, 57, sec. 5.

Recording of mortgages.

SEC. 51. That all mortgages executed by any company acquiring a right of way under this act, upon any portion of its road that may be constructed in said District of Alaska, shall be recorded with the Secretary of the Interior, and the record thereof shall be notice of their execution, and shall be a lien upon all the rights and property of said company as therein expressed, and such mortgage shall also be recorded in the office of the secretary of the District of Alaska and

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in the office of the secretary of the State or Territory wherein such company is organized: *Provided*, That all lawful claims of laborers, contractors, subcontractors, or material men, for labor performed or material furnished in the construction of the railroad, tramway, or wagon road shall be a first lien thereon and take precedence of any mortgage or other lien.

Mechanics' liens.

Charlton Code, p. 58, last par. sec. 6.

SEC. 52. That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by act of Congress.

Government reservations.

Charlton Code, p. 58, sec. 7.

NOTE.—By analogy, the Interior Department holds that the act of Congress, approved March 3, 1899 (30 Stat. L., 1233), authorizes the approval of railroad rights of way over and across any forest reservations or reservoir sites in Alaska.

Gavigan *v.* Crary, 2 Alaska Rep., 370; U. S. *v.* Berrigan, 2 Alaska Rep., 442; Behrends *v.* Goldsteen, 1 Alaska Rep., 518; Lear *v.* U. S., 1 Alaska Rep., 807.

SEC. 53. Congress hereby reserves the right at any time to alter, amend, or repeal this act or any part thereof; and the right of way herein and hereby authorized shall not be assigned or transferred in any form whatever prior to the construction and completion of at least one-fourth of the proposed mileage of such railroad, wagon road, or tramway, as indicated by the map of definite location, except by mortgages or other liens that may be given or secured thereon to aid in the construction thereof: *Provided*, That where within ninety days after the approval of this act, proof is made to the satisfaction of the Secretary of the Interior that actual surveys, evidenced by designated monuments, were made, and the line of a railroad, wagon road, or tramway located thereby, or that actual construction was commenced on the line of any railroad, wagon road, or tramway prior to January twenty-first, eighteen hundred and ninety-eight, the rights to inure hereunder shall, if the terms of this act are complied with as to such railroad, wagon road, or tramway, relate back to the date when such survey or construction was commenced; and in all conflicts relative to the right of way or other privilege of this act the person, company, or corporation having been first in time in actual survey or construction, as the case may be, shall be deemed first in right.

Amendment.

Transfer of right of way.

*Proviso.*
Preference to priority in survey, etc.

Charlton Code, p. 59, sec. 8.

SEC. 54. That the map and profile of definite location of such railroad, wagon road, or tramway, to be filed as hereinbefore provided, shall, when the line passes over surveyed lands, indicate the location of the road by reference to section or other established survey corners, and where such line passes over unsurveyed lands the location thereon shall be indicated by courses and distances and by references to natural objects and permanent monuments in such manner that the location of the road may be readily determined by reference to descriptions given in connection with said profile map.

Indication of location on profile map.

—surveyed lands.

—unsurveyed.

Charlton Code, p. 59, sec. 9.

SEC. 55. That the right of any homestead settler to transfer any portion of the land so settled upon, as provided by section twenty-two hundred and eighty-eight of the Revised Statutes of the United States, shall be restricted and limited within the District of Alaska as follows: For church, cemetery, or school purposes to five acres, and for the right of railroads across such homestead to one hundred feet in width on either side of the center line of said railroad; and all contracts by the settler made before his receipt of patent from the

Mar. 3, 1903.
32 Stat. L., 1029.

Transfers permitted.

R. S., sec. 2288, p. 419.

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Contracts voidable.

Government, for the conveyance of the land homesteaded by him or her, except as herein provided, shall be held null and void.

Charlton Code, p. 94, last par.

NOTE.—The title and dominion of the tidewaters and the lands under them and the beds and banks of navigable streams in Alaska are held by the United States in trust for the future States to be erected there.

A homestead entry perfected under the United States land laws, where the land abuts upon the waters of a navigable stream, gives to the qualified entryman the exclusive right to the use and occupation of the shore land between high and low water mark as against a mere trespasser.

U. S. *v.* Roth, 2d Alaska Reports, 257, ibid., p. 416; Gavigan *v.* Crary, 2 Alaska Rep., p. 370; Heine *v.* Roth, 2 Alaska Rep., p. 416; M'Cluskey *v.* Pacific Coast Co., 160 Fed. Rep., p. 794.

Mar. 3, 1899.

30 Stat. L., p. 1151.

Congress to authorize construction of bridges over navigable waters. —approval of plans.

SEC. 56. That it shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.

*Provisos.*
Legislatures to authorize on waters wholly within State.

Deviation from plans.

No obstruction to navigation not authorized.
Works outside harbor lines forbidden.

SEC. 57. That the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.

Excavations, alterations, etc., in channels, only where authorized.

Establishment of harbor lines.

SEC. 58. That where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tidewater displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the

*Proviso.*
Compensation for tidewater displaced.

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permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tidewater as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him.

Penalties; removal of structures.

SEC. 59. That every person and every corporation that shall violate any of the provisions of sections fifty-six, fifty-seven, and fifty-eight of this act, or any rule or regulation made by the Secretary of War in pursuance of the provisions of the said section fourteen, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any circuit court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States.

NOTE.—Section 14 referred to is section 14 of act of March 3, 1899, 30 Stat. L., 1152.

Mar. 23, 1906.

34 Stat. L., p. 84.

Bridges.

General provisions for constructing, over navigable waters.

SEC. 60. That when, hereafter, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of this act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.

Secretary of War to approve plans, etc.

Modification of plans restricted.

Lawful structures and post routes.

SEC. 61. That any bridge built in accordance with the provisions of this act shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies.

Telegraph, etc., rights.

Use by other companies.

SEC. 62. That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him.

Compensation.

Unobstructed navigation.

SEC. 63. That no bridge erected or maintained under the provisions of this act shall at any time unreasonably obstruct the free navigation

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of the waters over which it is constructed, and if any bridge erected in accordance with the provisions of this act shall, in the opinion of the Secretary of War, at any time unreasonably obstruct such navigation, either on account of insufficient height, width of span, or otherwise, or if there be difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the Secretary of War, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made, and prescribing in each case a reasonable time in which to make such

Changes.

changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a violation of this act; and all such alterations shall be made and all such obstructions shall be removed at the expense of the persons owning or operating said bridge. The persons owning or operating any such bridge shall

Lights, etc.

maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce and Labor shall prescribe. If the

Opening draw.

bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other water

Tolls.

craft. If tolls shall be charged for the transit over any bridge constructed under the provisions of this act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for such transit.

Noncompliance with regulations a misdemeanor.

SEC. 64. Any persons who shall fail or refuse to comply with the lawful order of the Secretary of War or the Chief of Engineers, made in accordance with the provisions of this act, shall be deemed guilty of a violation of this act, and any persons who shall be guilty of a violation of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of com-

Penalty.

petent jurisdiction by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States

Litigation.

at the request of the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under this act, the cause or question arising may be tried before the circuit court of the United

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States in any district which any portion of such obstruction or bridge touches.

Time of construction.

SEC. 65. That whenever Congress shall hereafter by law authorize the construction of any bridge over or across any of the navigable waters of the United States, and no time for the commencement and completion of such bridge is named in said act, the authority thereby granted shall cease and be null and void unless the actual construction of the bridge authorized in such act be commenced within one year and completed within three years from the date of the passage of such act.

Meaning of "persons."

SEC. 66. That the word "persons" as used in this act shall be construed to import both the singular and the plural, as the case demands, and shall include municipalities, quasi municipal corporations, corporations, companies, and associations.

Amendments, etc.

SEC. 67. That the right to alter, amend, or repeal this act is hereby expressly reserved as to any and all bridges which may be built in accordance with the provisions of this act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any bridge which shall have been constructed in accordance with its provisions.

NOTE.—Legal fencing by railroads, what constitutes. (31 Stat. L., 547; see civil code, sec. 764.)

Live stock injured by, includes. (31 Stat. L., 547; see civil code, sec. 763.)

Notice of animals killed or injured by, to be given. (31 Stat. L., 547; see civil code, sec. 765.)

Description required in; penalty for failing to file; where to be posted. (31 Stat. L., 547; see civil code, secs. 765–767.)

Proof of killing conclusive evidence of negligence, except contributory negligence may be offered in defense. (31 Stat. L., 548; see civil code, sec. 767.)

Service of summons on, how made. (31 Stat. L., 547; see civil code, sec. 768.)

Who liable for injury by. (31 Stat. L., 547; see civil code, sec. 763.)

Subject of eminent domain. (31 Stat. L., 522; see civil code, sec. 633.)

License fee, $100 per mile per annum. (31 Stat. L., 331; see Code Criminal Procedure, sec. 2569.)

Killing by placing obstructions upon, is murder. (30 Stat. L., 1253; see criminal code, sec. 1884.)

Breaking, injuring, etc., and penalty. (30 Stat. L., 1261; see criminal code, sec. 1940.)

Burglary in, and penalty. (30 Stat. L., 1258; see criminal code, sec. 1918.)

Breaking and entering, what constitutes. (30 Stat. L., 1258; see criminal code, sec. 1920.)

Sec. 764. Civil code. *Legal fencing.*—High *v.* S. P. Co., 88 Pac. Rep., 961; Meier *v.* N. P. Co., 93 Pac. Rep., 690.)

Sec. 765. Civil code. *Notice of animals killed.*—Meier *v.* N. P. Co., 93 Pac. Rep., 690.

Sec. 766. Civil code. *Penalty for failing to file notice.*—Meier *v.* N. P. Co., 93 Pac. Rep., 690.

Sec. 767. Civil code. *Proof of killing conclusive evidence.*—Meier *v.* N. P. Co., 93 Pac. Rep., 690.

Sec. 768. Civil code. *Service of summons.*—Meier *v.* N. P. Co., 93 Pac. Rep., 690.

Sec. 633. Civil code. *Eminent domain, railways.*—Code of Civ. Proc., Mont., 2211; Less *v.* City of Butte, 72 Pac. Rep., 140; State *v.* Dist. Court, 88 Pac. Rep., 44; Helena Power Trans. Co. *v.* Spratt, 88 Pac. Rep., 73; Miocene Ditch Co. *v.* Jacobson, 146 Fed. Rep., 680; Spratt *v.* Helena Power T. Co., 94 Pac. Rep., 631; Ashby *v.* City of Juneau, 174 Fed. Rep., 736.

Sec. 1918. Criminal code. *Burglary in.*—State *v.* Moore, 25 Pac. Rep., 639; State *v.* Wright, 24 Pac. Rep., 229; State *v.* John, 13 Pac. Rep., 647.

Sec. 1920. Criminal code. *Breaking and entering.*—State *v.* Huntley, 35 Pac. Rep., 1064.

Sec. 763. Civil code. *Live stock injured by.*—Hindman *v.* O. R. & N. Co., 22 Pac. Rep., 116; Sullivan *v.* O. R. & N. Co., 24 Pac. Rep., 408; Eaton *v.* O. R. & N. Co., 24 Pac. Rep., 413; Moses *v.* S. P. Co., 23 Pac. Rep., 498; Eaton *v.* McNeill, 49 Pac. Rep., 874; Meeker *v.* N. P. Co., 28 Pac. Rep., 639; Wilmot *v.* Oregon R. Co., 87 Pac. Rep., 528; High *v.* S. P. Co., 88 Pac. Rep., 961; Jackson *v.* Sumpter Valley Ry. Co., 93 Pac. Rep., 356; Meier *v.* N. P. Co., 93 Pac. Rep., 690.

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Feb. 7, 1903.
[Pub. Res., No. 5.]
Akron, Sterling & Northern Railroad, Alaska.
Time for construction extended.
Vol. 30, p. 410.
32 Stat. L., 1230.

SEC. 68. That the time within which the Akron, Sterling and Northern Railroad Company is authorized to construct its line of railroad from the head of Valdez Bay, in the Territory of Alaska; thence extending up Lowe River twelve miles to Keystone Canyon; thence for a distance of three miles through said canyon, on the west side thereof; thence through Dutch Valley a distance of four miles; thence thirteen miles along the benches on the west side of Lowe River drainage, through Thompson Pass, as definitely located by said company, be, and the same is hereby, extended for two years from and after the passage of this resolution.

Apr. 9, 1904.
Western Alaska Construction Co.
Time extended for completing railroad.
Vol. 30, p. 410, amended.
33 Stat. L., 165.

SEC. 69. The time of the Western Alaska Construction Company to comply with the provisions of sections four and five of chapter two hundred and ninety-nine of the laws of the United States entitled "An Act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, in acquiring and completing its railroad now under construction in Alaska, is hereby extended as follows:

Filing of map.

First. The time to file the map and profile of definite location of its first section of at least twenty miles with the register of the land office in the District of Alaska, as provided in said sections four and five, is hereby extended to and including the thirty-first of December, nineteen hundred and four.

Completion of first section.
Vol. 30, p. 410.

Second. The time to complete the first section of at least twenty miles of its railroad, as provided in said section five, is hereby extended to and including within one year after the filing and approval of the definite location of said section of said railroad as in said chapter and by this Act it is provided; and such railroad company shall be entitled to all the benefits conferred upon it by the provisions of such Act upon its due compliance with all the provisions thereof, excepting only the provisions thereof relating to the filing of the map and profile of definite location of its first section of not less than twenty miles of its road within twelve months after filing with the Secretary of the Interior a preliminary actual survey and plat of its proposed route, as prescribed in said sections four and five of said Act, and the provisions thereof relating to the completion of the said first section of its road within one year, as originally provided in section five of said Act: *Provided*, That such railroad company shall file with the proper register of the land office for the district of Alaska a map and profile of the first section of its road of at least twenty miles on or before December thirty-first, nineteen hundred and four, and shall complete such section of its said road within one year after such definite location has been approved by the Secretary of the Interior, as provided in said section five of said Act.

*Proviso.*
Time limit for filing map of first section.
Time of construction.

NOTE.—Sections 4 and 5 referred to are sections 49 and 50 of this chapter 4. Charlton Code, p. 100.

Jan. 18, 1905.
Western Alaska Construction Co. may operate without payment of license fee.
Time limit.
Vol. 31, p. 331.

SEC. 70. It shall be lawful for the Western Alaska Construction Company to hereafter operate its railroad in the District of Alaska for a period of five years after the passage of this act without the payment of the license fee of one hundred dollars per mile per annum on each mile operated, as provided in section twenty-nine, chapter one, of the act entitled "An act for making further provisions for a civil government for Alaska, and for other purposes," approved June sixth, nineteen hundred: *Provided, however*, That this exemption from said license fees is upon the condition that said company shall build at least ten miles of railroad each year; but if more than ten miles be built in any one year it shall be credited to the work of the succeeding year.

*Proviso.*
Condition of exemption.
33 Stat. L., 605, 606.

Charlton Code, p. 110.

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Jan. 11, 1906.
34 Stat. L., 6.
Council City & Solomon River Railroad Co.
Time of construction extended.
Vol. 30, p. 410.

SEC. 71.—That the time of the Council City and Solomon River Railroad Company to comply with the provisions of sections four and five of chapter two hundred and ninety-nine of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, in acquiring and completing its railroad now under construction in Alaska, is hereby extended as follows:

Filing map of location.
Vol. 30, p. 410.

First. That the time to file the map and profile of definite location of its first section of at least twenty miles with the register of the land office in the District of Alaska, as provided in said sections four and five, is hereby extended to and including the thirty-first day of December, nineteen hundred and six.

Time of completion extended.
Vol. 30, p. 410.

Second. That the time to complete the first section of at least twenty miles of its railroad, as provided in said section five, is hereby extended to and including the thirty-first day of December, nineteen hundred and six, and the time for completing its entire railroad, as provided in said section five, is hereby extended to and including December thirty-first, nineteen hundred and nine.

May operate without payment of license fee.
Vol. 31, p. 331.

Third. That it shall be lawful for the Council City and Solomon River Railroad Company to hereafter operate its railroad in the District of Alaska for a period to and including December thirty-first, nineteen hundred and nine, without the payment of the license fee of one hundred dollars per mile per annum on each mile operated, as provided in section twenty-nine of chapter one of the act entitled "An act for making further provision for a civil government for Alaska, and for other purposes," approved June sixth, nineteen hundred.

NOTE.—Sections 4 and 5 referred to are sections 49 and 50 of this chapter 4.

Mar. 2, 1907.
34 Stat. L., 1225.
Council City & Solomon River Railroad Co.
Time of construction extended.
Vol. 30, p. 410.
Pub. Laws, 1st sess., p. 6, amended.

SEC. 72. That the time of the Council City and Solomon River Railroad Company to comply with the provisions of sections four and five of chapter two hundred and ninety-nine of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, in acquiring and completing its railroad now under construction in Alaska, is hereby extended as follows:

Time for filing maps extended.
Vol. 30, p. 410.

First. That the time to file the map and profile of definite location of its railroad with the register of the land office in the District of Alaska, as provided in sections four and five, after the filing of the map and profile of definite location of its first section of at least twenty miles has been filed with the said register, is hereby extended to and including the thirty-first day of December, nineteen hundred and nine.

Completion.

Second. That the time for completing its entire railroad is hereby extended to and including the thirty-first day of December, nineteen hundred and nine.

NOTE.—See note under section 71.

June 29, 1906.
34 Stat. L., 610.
Time extended for construction of Alaska Short Line Railway & Navigation Co.'s railroad.

SEC. 73. The time of the Alaska Short Line Railway and Navigation Company to comply with the provisions of sections four and five of chapter two hundred and ninety-nine of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, in acquiring and completing its railroad now under construction in Alaska is hereby extended as follows:

Filing map, etc.

First. The time to file the map and profile of definite location of its second section of at least twenty miles with the register of the

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Vol. 30, p. 410.

land office in the District of Alaska, as provided in said sections four and five, is hereby extended to and including the twentieth day of March, nineteen hundred and seven.

Completion of 20 miles of first section. Time extended to Mar. 20, 1907.

Second. The time to complete the first section of at least twenty miles of its railroad, as provided in said section five, is hereby extended to and including the twentieth day of March, nineteen hundred and seven, and such railroad and navigation company shall be entitled to all the benefits conferred upon it by the provisions of such act upon its due compliance with all the provisions thereof, excepting only the provisions thereof relating to the filing of the map and profile of definite location of its second section of not less than twenty miles of its road: *Provided*, That it shall have successively one year each after said twentieth day of March, nineteen hundred and seven, in which to file the map and profile of its definite location of the succeeding sections of not less than twenty miles each: *And provided further*, That it shall have five years in which to complete its entire line from Iliamna Bay to the Yukon River.

*Proviso.* Filing map of other sections.

Time of construction from Iliamna Bay to Yukon River.

NOTE.—See note under section 71.

Mar. 3, 1909.

35 Stat. L., 780.

Time extended for construction of Alaska Short Line Railroad in.

Vol. 34, p. 610, amended.

SEC. 74. That in consideration of the construction of the Alaska Short Line Railroad in Alaska being actually commenced prior to June first, nineteen hundred and ten, the time for the completion of the survey and construction of said railroad be, and the same is hereby, extended to a period of three years from said first day of June, anno Domini nineteen hundred and ten: *Provided*, That said company shall file with the Secretary of the Interior maps of definite location of its line of road, prior to the beginning of the construction of any twenty-mile section thereof, the same to be approved by the Secretary of the Interior, as is now required by the act approved May fourteenth, eighteen hundred and ninety-eight, providing for right of way for railroads in the District of Alaska.

*Proviso.* Map of definite location.

Vol. 30, p. 410.

June 7, 1910.

36 Stat. L., 459.

Time extended for construction of Alaska Short Line Railroad in.

Vol. 35, p. 780, amended.

SEC. 75. That, in consideration of the construction of the Alaska Short Line Railroad in Alaska by the Alaska Short Line Railway and Navigation Company being actually commenced prior to June first, nineteen hundred and eleven, the time for the completion of the survey and construction of said railroad be, and the same is hereby, extended to a period of three years from said first day of June, anno Domini nineteen hundred and eleven: *Provided*, That said company shall file with the Secretary of the Interior maps of definite location of its line of road prior to the beginning of the construction of any twenty-mile section thereof, the same to be approved by the Secretary of the Interior, as is now required by the act approved May fourteenth, eighteen hundred and ninety-eight, providing for right of way for railroads in the District of Alaska: *Provided further*, That if actual construction of the road be not commenced within one year after June first, nineteen hundred and ten, the right hereby granted shall not be so construed as to interfere with the attachment of other rights prior to the commencement of such construction.

*Provisos.* Filing maps, etc.

Vol. 30, p. 410.

Rights prior to construction.

June 30, 1906.

34 Stat. L., 708.

SEC. 76. The time for the compliance by the Alaska Central Railway Company with the provisions of sections four and five of chapter two hundred and ninety-five of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, by locating and completing its railroad in Alaska, is hereby extended, and the powers of said company are enlarged, as follows:

Extension of time for completion.

Vol. 30, p. 410, amended.

Time of filing map of definite location.

First. Said company shall have three years from the passage of this act within which to file a map of definite location, until which time all their rights originally secured by the filing of their plats of

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preliminary location shall continue, and six years from the date of filing of such maps of definite location within which to complete said railroad to the Tanana River.

Second. That there is hereby granted to said company for terminal purposes and for the building of approaches, wharves, docks, warehouses, elevators, and such other structures as may be necessary for the conduct of the business of said railway, on and contiguous to the Tanana River and the Yukon River, and at such points thereon as the company shall select, public land not exceeding one hundred and sixty acres at each of said points and having a frontage on each of the said rivers not to exceed one mile; and a similar grant of land is hereby made to said company for intermediate division terminals at points on the line of its railway to be selected by it as most convenient for said intermediate division terminals and approximately one hundred miles apart.

Grant of land for terminal purposes.

The land hereby granted shall be located and selected by said company and its rights shall attach thereto when it shall have filed in the office of the Secretary of the Interior a plat thereof, with a copy thereof in the local land office. Said company shall have the right to enter on and possess said lands immediately, but title shall not vest until the railroad of said company shall have been completed to said points respectively. There is further hereby granted to said company for similar purposes, on Resurrection Bay, two parcels of public land, one of an area of one and forty one-hundredths acres and the other of an area of twenty-eight one-hundredths acre, which lie between the line of mean high tide on said bay and the east line of the present right of way of the Alaska Central Railway and immediately east of the United States survey numbered seven hundred and twenty-six south and United States survey numbered seven hundred and twenty-sixth north, F. L. Ballaine soldier's additional homestead location, said two parcels being in addition to the land located by said company for terminal purposes on Resurrection Bay under the provisions of general law.

Filing plat.

Immediate possession.

Title.

Grant of land on Resurrection Bay.

Third. There is hereby granted the said company the right to purchase at one dollar and twenty-five cents an acre the reserve tract between the homestead locations of Scheffler and Ravell on the north shore of Resurrection Bay, said reserve tract having the same depth from the water front as the adjoining homestead locations.

Purchase of additional land.

Fourth. Said company shall have the right to locate its right of way along the navigable waters of Alaska and as near thereto as may be necessary for the safe, economical, and efficient construction and operation of its line of railway, any restriction, condition, reservation, or easement provided in, by, or under any act of Congress to the contrary notwithstanding, and the right of way for its railway is granted to said company on Resurrection Bay and at such other points as it may be found desirable to establish terminal facilities on, over, along, and across any roadway established along the shores of navigable waters under the act of Congress of May fourteenth, eighteen hundred and ninety-eight.

Locating right of way.

Vol. 30, p. 409.

Fifth. Said company shall be exempt from license tax and tax on its railway and railway property during the period of construction and for five years thereafter: *Provided*, That the total period of exemption shall not exceed ten years from the time of the passage of this act.

License tax, etc., exemption.

*Proviso.* Limit.

Sixth. Congress reserves the right to alter, amend, or repeal this act.

Amendment.

Seventh. Nothing herein contained shall be taken as vacating or impairing the reserved shore roadway and riparian rights provided

Restriction.

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Vol. 30, p. 409.

for under the said act approved May fourteenth, eighteen hundred and ninety-eight.

NOTE.—See note under section 71.

Mar. 2, 1909.

35 Stat. L., 683.
Time extended for completion.
Vol. 30, p. 410.
Vol. 34, p. 798, amended.

SEC. 77. The time for filing the map of definite location of the Alaska Central Railway, as required by the provisions of chapter two hundred and ninety-nine of the Laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, be, and the same is hereby, extended for three years from the date of the passage of this act, and that the time for completion of said Alaska Central Railway be, and the same is hereby, extended for three years from the expiration of the period provided for in the act entitled "An act to extend the time for the completion of the Alaska Central Railway, and for other purposes," approved June thirtieth, nineteen hundred and six: *Provided*, That nothing herein contained shall be held or construed to affect any lawfully accrued rights.

*Proviso.*
Legal rights not affected.

June 30, 1906.

34 Stat. L., 803.
Controller Bay, Alaska.
Alaska Pacific Railway & Terminal Co. may construct railroad trestle across.

SEC. 78. The Alaska Pacific Railway and Terminal Company, a corporation organized under the laws of the State of Washington, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate a railroad trestle and approaches thereto across the tide and shore lands in Controller Bay from the mainland to Whale Island, in the Territory of Alaska, the mainland terminus and approaches of said railroad trestle to be located at or near a point six hundred feet east of the southeast corner of United States survey numbered five hundred and seventy-two, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

*Ante*, p. 84.

Amendment.

That the right to alter, amend, or repeal this act is hereby expressly reserved.

June 30, 1906.

34 Stat. L., 804.
Copper River, Alaska.
Alaska Pacific Railway & Terminal Co. may bridge at Childs Glacier.

SEC. 79. The Alaska Pacific Railway and Terminal Company, a corporation organized under the laws of the State of Washington, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate a railroad bridge and approaches thereto, across the Copper River, at or near Childs Glacier, in the Territory of Alaska, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

*Ante*, p. 84.

Amendment.

That the right to alter, amend, or repeal this act is hereby expressly reserved.

Mar. 11, 1908.

35 Stat. L., 41-42.
Alaska Pacific Railway & Terminal Co.
Time extended for completing road.
Vol. 30, p. 410.

SEC. 80. The time of the Alaska Pacific Railway and Terminal Company to comply with the provisions of sections four and five of chapter two hundred and ninety-nine of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, in acquiring and completing its railroad now under construction in Alaska is hereby extended, as follows:

Filing maps, etc.
Vol. 30, p. 410.

First. The time to file the map and profile of definite location of its second section of at least twenty miles with the register of the land office in the District of Alaska, as provided in said sections four and five, is hereby extended to and including the eighteenth day of March, nineteen hundred and nine.

Completion of 20 miles of first section.
Time extended to Mar. 18, 1909.

Second. The time to complete the first section of at least twenty miles of its railroad, as provided in said section five, is hereby extended to and including the eighteenth day of March, nineteen hundred and nine, and such railroad company shall be entitled to all the benefits conferred upon it by the provisions of such act upon its due compliance with all the provisions thereof, excepting only the pro-

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visions thereof relating to the filing of the map and profile of definite location of its second section of not less than twenty miles of its road: *Provided*, That it shall have, successively, one year each after said eighteenth day of March, nineteen hundred and nine, in which to file the map and profile of its definite location of the succeeding sections of not less than twenty miles each: *And provided further*, That it shall have five years in which to complete its entire line.

*Provisos.*
Filing map of other sections.

Time of completion of entire line.

NOTE.—See note under section 71.

SEC. 81. The time for the compliance of the Valdez, Marshall Pass and Northern Railroad Company with the provisions of sections four and five of chapter two hundred and ninety-five of the laws of the United States, entitled "An act extending the homestead laws and providing for the right of way for railroads in the District of Alaska, and for other purposes," approved May fourteenth, eighteen hundred and ninety-eight, by locating and completing its railroad in Alaska, is hereby extended—

Feb. 21, 1907.
34 Stat. L., 916.
Valdez, Marshall Pass & Northern Railroad Co.
Vol. 30, p. 410.

First. Said company shall have three years from the passage of this act within which to complete the first twenty miles of its railroad, by way of Keystone Canyon, Marshall Pass to Copper River, and from thence to Tanana River, and six years from the date of the passage of this act within which to complete said railroad to the Tanana River, all to be within such rights as it possesses and not in any way affecting or contravening any vested rights of any other company or person or the rights of the Government, provided said company carry out the requirements of law.

Time extended for building road.

Second. Said company shall be exempt from license tax during the period of construction and for four years thereafter: *Provided*, That the total period of exemption shall not exceed ten years from the time of the passage of this act: *And provided further*, That this exemption shall exist and operate only during the continuance of the construction of said road in good faith, and in the event of unnecessary delay and failure in the construction and completion of said road the exemption from taxation herein provided shall cease and said tax shall be collectible as to so much of said road as shall have been completed.

License exemption.
*Provisos.*
Time.
Condition.

Third. Congress reserves the right to alter, amend, or repeal this act.

Amendment.

NOTE.—See note under sec. 71.

SEC. 82. That the act entitled "An act to extend the time for the completion of the Valdez, Marshall Pass and Northern Railroad, and for other purposes," approved February twenty-first, nineteen hundred and seven, be, and the same is hereby, amended to read as follows:

Mar. 2, 1909.
35 Stat. L., 684.
Valdez, Marshall Pass & Northern Railroad Co.

"That the time for the compliance of the Valdez, Marshall Pass and Northern Railroad Company with the provisions of sections four and five of the act entitled 'An act extending the homestead laws and providing for the right of way for railroads in the district of Alaska, and for other purposes,' approved May fourteenth, eighteen hundred and ninety-eight, by locating and completing its railroad in Alaska, is hereby extended—

Time extended for completing road.
Vol. 30, p. 410.
Vol. 34, p. 915, amended.

"First. Said company shall have four years from the passage of this act within which to complete the first twenty miles of its railroad, by way of Keystone Canyon, Marshall Pass to Copper River, and from thence to Tanana River, and six years from the date of the passage of this act within which to complete said railroad to the Tanana River, all to be within such rights as it possesses and not in any way affecting or contravening any vested rights of any other company or person or the rights of the Government, provided said company carry out the requirements of law.

Further extension.

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License tax exemption.
Provisos.
Time.
Condition.

"Second. Said company shall be exempt from license tax during the period of construction and for four years thereafter: *Provided*, That the total period of exemption shall not exceed ten years from the time of the passage of this act: *And provided further*, That this exemption shall exist and operate only during the continuance of the construction of said road in good faith, and in the event of unnecessary delay and failure in the construction and completion of said road the exemption from taxation herein provided shall cease and said tax shall be collectible as to so much of said road as shall have been completed.

Amendment.

"Third. Congress reserves the right to alter, amend, or repeal this act."

NOTE.—See note under sec. 71.

Mar. 2, 1907.
34 Stat. L., 1233.
Tanana Mines Railroad exempt from taxes.
Provisos.
Time.
Conditions.
Amendment.

SEC. 83. The Tanana Mines Railroad Company, or its successors, having a line of railroad under construction in the district of Alaska, shall be exempt from license tax and tax on its railway and railway property during the period of its construction and for five years thereafter: *Provided*, That the total period of exemption shall not exceed ten years from the time of the passage of this act: *And provided further*, That this exemption shall exist and operate only during the continuance of the construction of said road in good faith, and in the event of unnecessary delay in the construction and completion of said road the exemption from taxation herein provided shall cease, and said tax shall be collectible as to so much of said road as shall have been completed five years.

That Congress reserves the right to alter, amend, or repeal this act.

Mar. 4, 1911.
36 Stat. L., 1360–1361.
Controller Railway & Navigation Co. may construct two bridges across Bering River.
Location.
Extension of line.

SEC. 84. That the Controller Railway and Navigation Company, a corporation organized and existing under the laws of the State of New Jersey, its successors and assigns, be, and they are hereby, authorized and empowered to construct, maintain, and operate, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six, two bridges across the Bering River, in the District of Alaska, to be located as follows: The upper bridge to cross the said Bering River at a point near the mouth of Stillwater Creek, and the lower bridge to cross the Bering River at a point about four miles above Bering Lake; also to extend its line of railway from the terminus of its line on the north shore of Controller Bay, as shown on its map of definite location filed in the Land Department December fourteenth, nineteen hundred and ten, on and over the tide lands and navigable waters of Alaska in said Controller Bay to the main channel, and to construct, build, erect, maintain, use, and operate at the end of such line of railway, when so extended upon said main channel, under rules and regulations to be prescribed by the Secretary of War, necessary wharves, docks, slips, waterways, and coal and oil bunkers, provided that the extent of and the plans for such structures are recommended by the Chief of Engineers and approved by the Secretary of War, in accordance with the provisions of section ten of the river and harbor act approved March third, eighteen hundred and ninety-nine.

Wharves, etc.
Vol. 30, p. 1151.
Right of way over tide and shore lands.
Proviso.
Conditions.

That the said Controller Railway and Navigation Company, its successors and assigns, are hereby authorized to use, in the construction and maintenance of said extension of said line of railway, a right of way on, through, and over the tide and shore lands of the United States actually necessary to connect its railway with the navigable waters in said Controller Bay, not to exceed one hundred feet on each side of the center line of such extension of said line of railway: *Provided*, That the easement hereby authorized may be exclusively exercised so long as said railway is maintained and operated

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for railroad purposes, but that nothing in this act contained shall be construed as impairing the right of the United States, or of any State that may hereafter be erected out of this district, to regulate the use of said right of way and the pier or dock herein authorized to be constructed, nor the right of the United States or of any such State to fix reasonable charges for the use of any pier, dock, or wharf constructed or maintained hereunder, nor shall it in anywise interfere with the authority on the part of the Secretary of the Interior to accord wharfage and other privileges in front of reserved areas, as provided in the act of May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for right of way for railroads in Alaska, and for other purposes."

Regulations, charges, etc.

Vol. 30, p. 409.

That the title to all lands occupied under this act shall remain in the United States, subject to the use hereby authorized, and the right to alter, amend, or repeal this act is hereby expressly reserved.

Title not transferred.

NOTE.—See for creation of a railroad commission sec. 425, Political Code, Title XI, chapter 3.

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# TITLE IV.

## PUBLIC LANDS.

(Department of the Interior, Commissioner of Land Office.)


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## CHAPTER ONE.

### TOWN SITES.


Sec.
85. How and by whom entered. (See note for decisions of court.)
86. Entry of town authorities in trust for occupants.
87. Certain acts of trustees to be void. (See note for prior and similar acts.)
88. No title acquired to gold mines, etc., or to mining claim, etc. (See note for prior and similar acts.)
89. Military or other reservations, etc., exempt.
90. Town-site entries on mineral lands not to include mining rights. (See notes for decisions of court relative to entire act.)
91. Aliens may acquire lots. (See note relative to regulations of the Department of the Interior, General Land Office.)


Mar. 3, 1891.
26 Stat. L., 1099.

How and by whom entered.

SEC. 85. That until otherwise ordered by Congress, lands in Alaska may be entered for town-site purposes, for the several use and benefit of the occupants of such town sites, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, such entries to be made under the provisions of section twenty-three hundred and eighty-seven of the Revised Statutes as near as may be; and when such entries shall have been made, the Secretary of the Interior shall provide by regulation for the proper execution of the trust in favor of the inhabitants of the town site, including the survey of the land into lots, according to the spirit and intent of said section twenty-three hundred and eighty-seven of the Revised Statutes, whereby the same results would be reached as though the entry had been made by a county judge and the disposal of the lots in such town site and the proceeds of the sale thereof had been prescribed by the legislative authority of a State or Territory: *Provided*, That no more than six hundred and forty acres shall be embraced in one town-site entry.

Charlton Code, sec. 11, p. 36.

NOTE.—This is the first and only act expressly providing for town sites in Alaska; other acts and their history deemed applicable to Alaska town sites will follow.

NOTE.—See F. S. A., (1) 53, also 6, F. S. A., 344.

In Sawyer *v.* Van Hook, 1 Alaska Rep., 108.

*Held*, It was the aim of Congress to dispose of town lots in Alaska only to actual settlers and occupants; the first settler or occupant in point of time is entitled to the lot.



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Foss *v.* Dam, 1 Alaska Rep., 346.

*Held*, One who is in possession of a lot on the public lands in Alaska and using the same for the purpose of trade or residence, may maintain a suit to quiet his title thereto.

Osgood *v.* Donnelly, 1 Alaska Rep., 385.

*Held*, Matters in abatement are not favored and must be specially pleaded or they are waived.

A mere occupancy for a brief time by camping on the ground in a tent is not sufficient evidence of the occupation of public lands for the purpose of trade and manufacture upon which to base title under the land laws.

McIntosh *v.* Town of Nome, 1 Alaska Rep., 492.

*Held*, Streets and public ways set apart for the public use by town-site settlers will be protected by the courts from trespassing claimants, though dedicated prior to a formal application for entry under the town-site act.

Lewis *v.* Johnson, 1 Alaska Rep., 529.

*Held*, That the statute of limitations does not run against the Government; that a trespasser can not acquire right or title to tide land by mere occupancy. The upland owner has a right to build a wharf upon tide lands in front of his property. A town-site trustee is charged with the duty of determining who of several claimants to a lot or lots was in rightful possession and to make title to the rightful possessor. The Department of the Interior has sole jurisdiction over such matters, and its acton thereon is final.

Crawford *v.* Burr, 2 Alaska Rep., 33.

*Held*, That title can not obtain to land on a military reservation, and when reservation is abandoned and the land located by town-site claimants, the occupant will be limited to land actually occupied by him.

Johnson *v.* Pacific Coast S. S. Co., 2 Alaska Rep., 224.

*Held*, When a patent is once issued for public lands the duties of the Interior Department have been fully performed. The department has no power to set aside or cancel the patent, but where patent to public land has been issued to the wrong person, an action in a court of competent jurisdiction will lie to remedy the wrong. See also this case for a discussion of the rights of Indians to public lands. Also held that persons occupying a reasonable quantity of public land in Alaska for manufacturing, business houses, or for a wharf, may obtain title to such land under the acts of Congress providing therefor. Such applicants are not necessarily restricted to a single lot, the size of which may be fixed by an arbitrary rule of the trustee.

(See Miller *v.* Margerie, 149 Fed. Rep., 694; Chilberg *v.* The Consumers Milk Co., No. 1564, 2d div.; McCloskey *v.* Pac. Coast Co., 160 Fed. Rep., 794; Gordon *v.* Ross, Higgins Co., 162 Fed. Rep., 637.

Entry of town authorities in trust for occupants.

2 Mar., 1867, c. 177, v. 14, p. 541. 23 June, 1874, c. 469, s. 3, v. 18, p. 254. R. S., sec. 2387.

SEC. 86. Whenever any portion of the public lands have been or may be settled upon and occupied as a town site, not subject to entry under the agricultural preemption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

Certain acts of trustees to be void.

2 Mar., 1867, c. 177, v. 14, p. 541. 23 June, 1874, c. 469, s. 3, v. 18, p. 254. R. S., sec. 2391.

SEC. 87. Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void.

NOTE.—Act approved March 2, 1867 (14 Stat., 541). (See similar act approved May 23, 1844, 5 Stat., 657, repealed by act approved July 1, 1864, 13 Stat., 844, sec. 5.) Acts approved June 23, 1874 (18 Stat., 254, sec. 3), and March 3, 1877 (19 Stat., 392).

No title acquired to gold mines, etc., or to mining claim, etc.

2 Mar., 1867, c. 177, v. 14, p. 541. 8 June, 1868, c. 53, v. 15, p. 67. 23 June, 1874, c. 469, s. 3, v. 18, p. 254. R. S., sec. 2392.

SEC. 88. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining claim or possession held under existing laws.

NOTE.—Act approved March 2, 1867 (14 Stat., 542), and act approved June 8, 1868 (15 Stat., 67). (See sec. 2386, Rev. Stats., and sec. 16, act of Mar. 3, 1891, 26 Stat., 1101.)

Military or other reservations, etc.

2 Mar., 1867, c. 177, v. 14, p. 541.

SEC. 89. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for lighthouses, customhouses, mints, or such other pub-



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lic purposes as the interests of the United States may require, whether held under reservations through the land office by title derived from the Crown of Spain, or otherwise.

Crawford *v.* Burr, 2 Alaska Rep., 33; see note under sec. 85.

Mar. 3, 1891.
Stat. L., 26, 1101.

SEC. 90. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Town-site entries on mineral lands not to include mining rights.

Mining claims.

*Proviso.* Prior right of surface owner.

Charlton Code, sec. 16, p. 37.

NOTE.—The platting of public reserves and the sale of the unreserved lots in a town site constitutes a dedication of such reserves to the public.

City of Cincinnati *v.* lessee of Edward White, 6 Peters, 431.
New Orleans *v.* The United States, 10 Peters, 720, 730.
City of Dubuque *v.* Maloney, 9 Iowa, 450, 455.
Cook *v.* City of Burlington, 30 Iowa, 94.
Commonwealth *v.* Beaver Borough et al., 171 Pa. State, 542.
Lamar County *v.* S. E. Clements et al., 49 Texas, 347.
Illinois Central R. R. *v.* Illinois, 146 U. S., 387, 462.
United States *v.* Illinois Central, 154 U. S., 225.
Scully *v.* Squier, 215 U. S., 144.

NOTE.—Where land is patented to a Government agent, in trust for disposal in town lots, the legal title to each lot remains in the Government until deeded by the trustee.

Hussey *v.* Smith, 99 U. S., 20–22.
Stringfellow *v.* Cain, 99 U. S., 610–615.
McDaid *v.* Oklahoma Territory, 150 U. S., 209–219.
Bockfinger *v.* Foster, 190 U. S., 116–123.
Scully *v.* Squier, 215 U. S., 144.

NOTE.—Occupancy and improvement of town lots on public land segregates it from other disposal, except under the mining laws, and when entered by a trustee the equitable title vests in such occupants.

Carroll *v.* Price, 81 Fed. Rep., 137.
Cofield *v.* McClelland, 16 Wallace, 331.
Hussey *v.* Smith, 99 U. S., 20.
Stringfellow *v.* Pain, 99 U. S., 610.
Ashby *v.* Hall, 119 U. S., 526.
Maloney *v.* Adsit, 175 U. S., 281–289.
Scully *v.* Squier, 215 U. S., 144.
Town of Aspen *v.* Rucker et al., 10 Colo., 184.
Mayor of Aspen *v.* Aspen Town Land Co., 10 Colo., 191.

Mar. 2, 1897.
29 Stat. L., 618.

SEC. 91. This act shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village, * * * in any of the Territories of the United States.

Aliens may acquire lots.

* * * * * * *

NOTE.—The above is section 2 of act of March 2, 1897, entitled "An act to better define and regulate the rights of aliens to hold and own real estate in the Territories."

NOTE.—The first regulations under the above act were issued from the Department of the Interior, General Land Office, June 3, 1891, and are to be found in 12 L. D., on pp. 592 to 595, inclusive.

The present regulations issued by the Department of the Interior, General Land Office, August 1, 1904, and are contained in circular relating to manner of acquiring title to town sites on public lands in District of Alaska. (See also 33 L. D., 163.)

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Surveys of the exterior lines of such townsites are provided for in section 2, on page 1, of said circular. Subdivisional surveys into lots and blocks are provided for in sections 9 and 10, on pages 6 and 7 of the circular.

A sixty-foot roadway along shore line is not reserved in townsites. (See section 26, act of June 6, 1900; 31 Stat., 330.)

## CHAPTER TWO.

### ENTRIES FOR TRADE, MANUFACTURE, OR OTHER PRODUCTIVE INDUSTRY.

Sec.
92. Purchase of land embracing his improvements by occupant for purposes of trade. *Provisos:* Entries on navigable water, limit; alternate spaces reserved; use of for wharves, etc.; roadway reserved; adverse claimants; purchases for trade; landing places for natives; certain islands reserved; admissibility of testimony, etc.
NOTE.—This section amends act of March 3, 1891 (26 Stat. L., 1096).
92½. Purchases for trade, March 3, 1891.
92¾. Payment for surveys, etc.
92¾. Mineral, etc., lands, reserved.
92¾. Annette Islands, etc., reserved.

May 14, 1898.
30 Stat. L., 409, 413.

Purchase of land embracing his improvements by occupant for purposes of trade.

SEC. 92. Any citizen of the United States twenty-one years of age, or any association of such citizens, or any corporation incorporated under the laws of the United States or of any State or Territory now authorized by law to hold lands in the Territories, hereafter in the possession of and occupying public lands in the District of Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at two dollars and fifty cents per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry, such tract of land not to include mineral or coal lands, and ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: *Provided*, That no entry shall be allowed under this act on lands abutting on navigable water of more than eighty rods: *Provided further*, That there shall be reserved by the United States a space of eighty rods in width between tracts sold or entered under the provisions of this act on lands abutting on any navigable stream, inlet, gulf, bay, or seashore, and that the Secretary of the Interior may grant the use of such reserved lands abutting on the water front to any citizen or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings, and wharves, with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a roadway sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway: *Provided further*, That in case more than one person, association, or corporation shall claim the same tract of land, the person, association, or corporation having the prior claim, by reason of actual possession and continued occupation in good faith, shall be entitled to purchase the same, but where several persons are or may be so possessed of parts of the tract applied for the same shall be awarded to them according to their respective interests: *Provided further*, That all claims substantially square in form and lawfully initiated, prior to January twenty-first eighteen hundred and ninety-eight, by survey or otherwise, under sections twelve and thirteen of the act approved

*Provisos.*
Entries on navigable water, limit, 80 rods.

Alternate spaces reserved.

—use of for wharves, etc.

—roadway reserved.

Adverse claimants.

Purchases for trade.

Vol. 26, p. 1100.

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March third, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, chapter five hundred and sixty-one), may be perfected and patented upon compliance with the provisions of said act, but subject to the requirements and provisions of this act, except as to area, but in no case shall such entry extend along the water front for more than one hundred and sixty rods: *And provided further*, That the Secretary of the Interior shall reserve for the use of the natives of Alaska suitable tracts of land along the water front of any stream, inlet, bay, or sea shore for landing places for canoes and other craft used by such natives: *Provided*, That the Annette, Pribilof Islands, and the islands leased or occupied for the propagation of foxes be excepted from the operation of this act.

Landing places for natives.

Certain islands reserved.

Admissibility of testimony, etc. Vol. 26, p. 1093.

That all affidavits, testimony, proofs, and other papers provided for by this act and by said act of March third, eighteen hundred and ninety-one, or by any departmental or Executive regulation thereunder, by depositions or otherwise, under commission from the register and receiver of the land office, which may have been or may hereafter be taken and sworn to anywhere in the United States, before any court, judge, or other officer authorized by law to administer an oath, shall be admitted in evidence as if taken before the register and receiver of the proper local land office. And thereafter such proof, together with a certified copy of the field notes and plat of the survey of the claim, shall be filed in the office of the surveyor general of the District of Alaska, and if such survey and plat shall be approved by him, certified copies thereof, together with the claimant's application to purchase, shall be filed in the United States land office in the land district in which the claim is situated, whereupon, at the expense of the claimant, the register of such land office shall cause notice of such application to be published for at least sixty days in a newspaper of general circulation published nearest the claim within the District of Alaska, and the applicant shall at the time of filing such field notes, plat, and application to purchase in the land office, as aforesaid, cause a copy of such plat, together with the application to purchase, to be posted upon the claim, and such plat and application shall be kept posted in a conspicuous place on such claim continuously for at least sixty days, and during such period of posting and publication or within thirty days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to the tract of land or any part thereof sought to be purchased, may file in the land office where such application is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

Procedure on application for patent.

Adverse claimants.

Charlton Code, page 59, section 10.

NOTE.—The regulations under the present law include directions relative to the survey of the land. Said regulations will be found in 32 L. D., pages 439 to 442, inclusive. For copies of regulations, apply to the Commissioner of the Land Office.

NOTE.—The original law covering this subject is that contained in sections 12 to 14, inclusive, of the act of March 3, 1891 (26 Stat. L., 1096, 1100). (See secs. 92⅛ and 92⅜, post.) The regulations under the act, together with a copy of said sections, will be found in 12 L. D., on pages 584 to 592, the regulations being found in paragraphs 1 to 22, inclusive.

Sutter *v.* Heckman, 1 Alaska Rep., 188.

*Held*, The owner of uplands bordering on the sea has littoral rights in the fronting tide flats * * *; he may construct wharves and land fish nets thereon, and will be protected in the unobstructed use thereof by injunction.

Osgood *v.* Donnelly, 1 Alaska Rep., 385.

*Held*, Brief occupancy not sufficient to base title under land laws.

Gavigan *v.* Crary, 2 Alaska Rep., 370.

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*Held*, Public lands lying within the limits of a reservation for military purposes are not subject to entry under the Soldiers' Additional Homestead laws, etc.

Revenue Mining Co. *v.* Bolderston, 2 Alaska Rep., 363.

*Held*, An unreasonable monopoly of water upon public lands will not be sustained.

Copper River Lumber Co. *v.* Humphrey, 2 Alaska Rep., 39.

*Held*, That party was entitled to the exclusive possession of land occupied for the purpose of manufacturing and sawing lumber.

Foss *v.* Dam, 1 Alaska Rep., 346.

*Held*, One in possession of a lot on the public lands in Alaska and using the same for the purpose of trade or residence may maintain a suit to quiet his title thereto.

Price *v.* Brockway, 1 Alaska Rep., 233.

*Held*, One who lays out a townsite into lots, blocks, and streets, and alleys, acquires no rights thereby. Such lots can be held only by one in actual use, occupation, or possession thereof.

Malony *v.* Adsit, 175 U. S. Rep., 281.

Carroll *v.* Price, 81 Fed. Rep., 137.

Lewis *v.* Johnson, 76 Fed. Rep., 479.

Town of Nome *v.* Schneider, 3 Alaska Rep., 58.

*Held*, Where one act is framed from another, some parts taken and others omitted, the later act operates, without any repealing clause, as a repeal of the first.

Mar. 3, 1891.
26 Stat. L., 1100.
Amended by act of May, 1898.
Supra, sec. 92.
Purchases for trade, etc., in Alaska.

SEC. 92½. Any citizen of the United States twenty-one years of age, and any association of such citizens, and any corporation incorporated under the laws of the United States, or of any State or Territory of the United States now authorized by law to hold lands in the Territories now or hereafter in possession of and occupying public lands in Alaska for the purpose of trade or manufactures, may purchase not exceeding one hundred and sixty acres, to be taken as near as practicable in a square form, of such land at two dollars and fifty cents per acre: *Provided*, That in case more than one person, association, or corporation shall claim the same tract of land the person, association, or corporation having the prior claim by reason of possession and continued occupation shall be entitled to purchase the same; but the entry of no person, association, or corporation shall include improvements made by or in possession of another prior to the passage of this act.

*Proviso.*
Adverse claimants.

Charlton Code, page 36, section 12.

Mar. 3, 1891.
26 Stat. L., 1100.
Payment for surveys.

SEC. 92¾. It shall be the duty of any person, association, or corporation entitled to purchase land under this act to make an application to the United States marshal, ex officio surveyor general of Alaska, for an estimate of the cost of making a survey of the lands occupied by such person, association, or corporation, and the cost of the clerical work necessary to be done in the office of the said United States marshal, ex officio surveyor general; and on the receipt of such estimate from the United States marshal, ex officio surveyor general, the said person, association, or corporation shall deposit the amount in a United States depository, as is required by section numbered twenty-four hundred and one. Revised Statutes, relating to deposits for surveys.

R. S., sec. 2401, p. 440.

Surveys.

That on the receipt by the United States marshal, ex officio surveyor general, of the said certificates of deposit he shall employ a competent person to make such survey, under such rules and regulations as may be adopted by the Secretary of the Interior, who shall make his return of his field notes and maps to the office of the said United States marshal, ex officio surveyor general; and the said United States marshal, ex officio surveyor general, shall cause the said field notes and plats of such survey to be examined, and, if correct, approve the same, and shall transmit certified copies of such maps and plats to the office of the Commissioner of the General Land Office.

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Approval of surveys, etc.

That when the said field notes and plats of said survey shall have been approved by the said Commissioner of the General Land Office, he shall notify such person, association, or corporation, who shall then, within six months after such notice, pay to the said United States marshal, ex officio surveyor general, for such land, and patent shall issue for the same.

Patents.

Charlton Code, pages 36, 37, section 13.

Mar. 3, 1891.

26 Stat. L., 1100–1.

Mineral, etc., lands reserved.

Fish-culture stations.

Missionary stations.

Seal Islands.

Salmon fisheries.

SEC. 92⅜. None of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the islands of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said District of Alaska are hereby excepted from the operation of the last three preceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections, the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.

Charlton Code, page 37, section 14.

The three last preceding sections referred to in this section are sections 85, 92⅛, and 92⅞ of this code

Mar. 3, 1891.

26 Stat. L., 1101.

Annette Islands reserved for Metlakahtla Indians.

SEC. 92¼. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

Charlton Code, page 37, section 15.

## CHAPTER THREE.

### MISSION CLAIMS.

Sec.
93. Missionary stations provided for.
94. Missionary stations exempted.
95. Occupants of school or mission lands not to be disturbed; lands to be surveyed; patents to be issued to societies; general land laws not to apply.

May 17, 1884.

23 Stat. L., 24, 26.

Missionary stations.

SEC. 93. The land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such

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societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress.

Charlton Code, p. 28, last par. of sec. 8.

NOTE.—Article 2 of the treaty with Russia, dated March 30, 1867 (15 Stat. L., 539, 541), provides as follows:

"It is understood and agreed that the churches which have been built in ceded territory by the Russian Government shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein."

Mar. 3, 1891.
26 Stat. L., 1100.
Missionary stations exempted.

SEC. 94. All tracts of land not exceeding 640 acres in any one tract now occupied as missionary stations in said District of Alaska, are hereby excepted from the operation of the last three preceding sections of this act.

Charlton Code, p. 37, part of sec. 14.

NOTE.—The three last preceding sections referred to in this section are secs. 85, 92½, and 92¾ of this title.

The above section reserves missionary stations from entry under the town site and trade and manufacturing laws.

June 6, 1900.
31 Stat. L., 321, 330.
Occupants of school or mission lands not to be disturbed.
—missionary stations.

SEC. 95. The Indians or persons conducting schools or missions in the District shall not be disturbed in the possession of any lands now actually in their use or occupation, and the land, at any station not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this act shall be construed to put in force in the District the general land laws of the United States.

General land laws not to apply.

Carter Code, sec. 27; Charlton Code, sec. 5968, p. 472, and p. 73, sec. 27.

Young *v.* Goldsteen (97 Fed. Rep., 303; 1 Alaska Rep., 803). Sutter *v.* Heckmann (1 Alaska Rep., 188). U. S. *v.* Berrigan (2 Alaska Rep., 442). Johnson *v.* Pac. Coast S. S. Co. (2 Alaska Rep., 224). McGrath *v.* Valentine (167 Fed. Rep., 473; 93 C. C. A., 109; 3 Alaska Rep., 835).

## CHAPTER FOUR.

### WHARVES AND DOCKS.

Sec.
96. Wharves and docks, between locations eighty rods of lands abutting on navigable streams, inlets, gulfs, or bay, or seashore, reserved. Secretary of the Interior may grant the use for landings and wharves at reasonable rates of toll, etc. A roadway, 60 feet in width, parallel to shore line, reserved.

May 14, 1898.
30 Stat. L., 409–413.
80 rods reserved.
Secretary of Interior may lease.

SEC. 96. No entry shall be allowed under this act on lands abutting on navigable waters for more than eighty rods: *Provided further*, That there shall be reserved by the United States a space of eighty rods in width between tracts sold or entered under the provisions of this act on lands abutting on any navigable stream, inlet, gulf, bay, or sea shore, and that the Secretary of the Interior may grant the use of such reserved lands abutting on the water front to any citizen or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings, and wharves, with the provision that the public

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60 feet for roadway reserved.

shall have access to and proper use of such wharves and landings, at reasonable rates of toll to be prescribed by said Secretary, and a roadway sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved as a public highway.

NOTE.—This is a part of section 10 of the act of May 14, 1898, of which section 92 of this volume is a copy, and is found in Charlton's Code, p. 59.

The regulations of the department are found in volume 32, L. D., p. 442, and are as follows:

A roadway 60 feet in width, parallel to the shore line as near as may be practicable, is reserved for the use of the public as a highway. "Shore line" here means high-water line. This reservation occurs in the proviso relating to the reservation between claims abutting on navigable waters; but since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act, as well as to the reserved lands; otherwise it would serve little or no purpose. This reservation will not, however, prevent the location and survey of a claim up to the shore line, for in such case the claim will be subject to this servitude and the area in the highway will be computed as a part of the area entered and purchased.

It is not deemed advisable at this time to prescribe any fixed form of application for the use of any of the reserved lands between claims entered or purchased under this act, excepting that—

(1) The citizenship of the applicants or association of applicants must be shown, and in the case of a corporation the same showing must be made as is required by paragraph under section two, granting right of way for railroads.

(2) The location of the landings or wharves must be accurately described on a map or diagram with reference to claims on either side.

(3) The use of such lands is limited to landings and wharves, and all rates of toll to be paid by the public must be submitted for approval by the Secretary of the Interior.

Government wharf in Alaska, see act of June 11, 1896, 29th Stat. L., 413, section 20 of this volume.

License for wharves (10 cents per ton on freight handled or stored.) (See Code of Criminal Procedure, sec. 2569.)

Penalty for willfully injuring or destroying wharf. (See Criminal Code, sec. 1940.)

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## CHAPTER FIVE.

### GOVERNMENT BUILDING SITES, ETC.

Sec.
97. Sites, provisions for Government buildings, etc.

June 6, 1900.
31 Stat. L., 321.

SEC. 97.—Any division of the court may, where necessary, order the construction or repair of a jail building at the place or places where terms of the court are held, at a cost not to exceed three thousand dollars for each building, the same to be paid by the clerk as provided for the payment of other allowances for the necessary expenses of the court; and any part or portion of the unappropriated public domain of the United States, embracing not more than four thousand square feet, to be taken in compact form, as near as may be practicable, may be set aside by order of the court as a jail site, which order shall describe the location of the ground selected, where unsurveyed by metes and bounds and by reference to natural objects and permanent monuments, in such manner that its boundaries and its location may be readily determined, a certified copy of which order of the court shall be by the clerk thereof transmitted to the Commissioner of the General Land Office, who shall cause the same to be noted on the records of his office, and thereafter the ground described shall be reserved from sale or other disposition, unless for good cause the court shall vacate the order of reservation or Congress shall otherwise direct.

Sites.

Construction of court building authorized.

Where a suitable court room is not available or can not be obtained at reasonable rental at the place or any of the places where terms of

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the court are held, the court may enter a like order of reservation and direct the construction of a suitable building where the sessions of the court may be held, the cost of such building not to exceed in any case —limit. the sum of five thousand dollars, the same to be paid and proceedings to reserve the land to be as in the case of the reservation of ground and construction of jail, as hereinbefore provided:

Charlton Code, p. 76, part of sec. 31.

NOTE.—Government building sites include lands withdrawn by Executive orders for military, naval, customhouse, and Indian school purposes, and the withdrawal of land at Juneau for the use of the governor and other executive officers of the civil government of the District and the same has been withdrawn under the general power vested in the President to make such withdrawals. Section 28 of the act of June 6, 1900 (31 Stat., 321, 330), may be authority for Indian schoolhouse site withdrawals.

## CHAPTER SIX.

### PARKS AND CEMETERIES.


Sec. 98. Cities may purchase lands for cemeteries and parks.

Sec. 98A. Sales for cemeteries authorized.


SEC. 98. Incorporated cities and towns shall have the right, under Sept. 30, 1890. rules and regulations prescribed by the Secretary of the Interior, to 26 Stat. L., 502. purchase for cemetery and park purposes not exceeding one-quarter Cities, etc., may purchase certain lands for cemeteries and parks. section of public lands not reserved for public use, such lands to be within three miles of such cities or towns: *Provided*, That when such Three-mile limit. city or town is situated within a mining district, the land proposed to *Proviso.* be taken under this act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract Mineral lands. mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered in such patent.

NOTE.—By decision of February 5, 1908 (36 L. D., 264), the department held the above act applicable to Alaska.

Cemetery associations may be formed, provisions for, and regulations of, see Civil Code, secs. 661 to 668.)

SEC. 98a. That the Secretary of the Interior be, and he is hereby, Mar. 1, 1907. authorized to sell and convey to any religious or fraternal associa- 34 Stat. L., 1052. tion, or private corporation, empowered by the laws under which Sales for cemeteries authorized. such corporation or association is organized or incorporated to hold real estate for cemetery purposes, not to exceed eighty acres of any unappropriated nonmineral public lands of the United States for cemetery purposes, upon the payment therefor by such corporation or association of the sum of not less than one dollar and twenty-five cents per acre: *Provided*, That title to any land disposed of under Price. the provisions of this act shall revert to the United States should the Reversion. land or any part thereof be sold or cease to be used for the purpose herein provided.

NOTE.—Regulations:

*Who may enter.*—Under the act approved March 1, 1907 (34 Stat. L., 1052), Aug. 7, 1909. the right to purchase public land for cemetery purposes is limited to religious, 38 L. D., 125. fraternal, and private corporations or associations empowered to hold real estate for cemetery purposes by the laws under which they are organized. Such corporation or association shall be allowed to make but one entry of not more than eighty acres of contiguous tracts by Government subdivisions of nonmineral, unreserved, and unappropriated public land.

*Where on unsurveyed land.*—If the public surveys have not been extended over the land so sought to be entered, the corporation or association should first apply to the proper surveyor-general for a special survey of the exterior lines of the tract desired, describing the topographical character of the land and its area and geographical location as accurately as possible. Such tracts must be as nearly as practicable in a rectangular form, and after the survey

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and plat thereof has been made, approved by the surveyor-general, accepted by this office, and filed in the local office, application may then be made for the entry of the land under said act. The cost of such surveys will be paid out of the current appropriation for "surveying the public lands," and the deputies employed will report whether the land is mineral in character.

The proof must satisfactorily show—

First. The filing of a notice of intention to make proof, the issuance, in manner and form so far as possible as in other cases provided, of the publication notice, to be published and posted for the time and in the manner provided by the act of March 3, 1879 (20 Stat. L., 472), and the regulations thereunder.

Second. The official character of the officer or officers applying on behalf of the association or corporation to make the entry, and his or their express authority to do so conferred by action of the association.

Third. A copy of the record, certified by the officer having charge thereof, showing the due incorporation and organization and date thereof of the association or corporation and its location and address. The law under which it is organized and by which it derives its authority to hold real estate for cemetery purposes must also be cited.

Fourth. That the land applied for is nonmineral, vacant, and unappropriated public land, and the extent to which it is used for cemetery purposes, and when first so used, if it is so used, which must be shown by the testimony of the applicant and two of the advertised witnesses.

*Price.*—The land must be paid for at such price per acre as shall be determined by the Commissioner of the General Land Office, provided that in no case shall the price be less than $1.25 per acre.

Entries under this act must issue to the association or corporation in its corporate name, and the granting clause in the certificate should state that the patent to be issued for the tract described is "for cemetery purposes, subject to reversion 'to the United States should the land, or any part thereof, be sold or cease to be used for the purpose' in said act provided." Inasmuch, however, as the commissioner of this office determines the amount of the purchase price under the existing conditions in each particular case, the register and receiver will, when proof is made to their satisfaction, immediately forward such proof to this office, with their recommendation thereon, without collecting any money as the purchase price and without issuing the final papers. If this office finds the proof satisfactory, the commissioner will fix the purchase price, and the local officers will, on being notified thereof and no objection appearing thereto in their office, notify the applicant of the amount required and allow him thirty days from service of such notice to pay such purchase price, and on receipt thereof the entry will be issued.

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## CHAPTER SEVEN.

### RIGHTS OF WAY FOR RAILROADS, WAGON ROADS, AND TRAMWAYS.

Sec.

99. Rights of way for railroads, wagon roads, and tramways.

NOTE.—For rights of way for railroads in the District of Alaska, see Title III, chap. 4, secs. 47, 48, 49, 50, 51, 52, 53, 54 of this volume. Also see act of May 14, 1898, 30th Stat. L., 409.

For rights of way for wagon roads and tramways, see Title III, Roads and Trails, chapter 3, section 40. (See act of May 14, 1898, 30th Stat. L., 411.)

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## CHAPTER EIGHT.

### TIMBER—SALE AND USE THEREOF.

Sec.

100. Timber—sale and use thereof.

May 14, 1898.
30 Stat. L., 414.

SEC. 100. That the Secretary of the Interior, under such rules and regulations as he may prescribe, may cause to be appraised the timber or any part thereof upon public lands in the District of Alaska, and

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may from time to time sell so much thereof as he may deem proper for not less than the appraised value thereof, in such quantities to each purchaser as he shall prescribe, to be used in the District of Alaska, but not for export therefrom. And such sales shall at all times be limited to actual necessities for consumption in the District from year to year, and payments for such timber shall be made to the receiver of public moneys of the local land office of the land district in which said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe, and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office in a separate account, and shall be covered into the Treasury. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber found upon the public lands in said District of Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes, as may actually be needed by such persons for such purposes.

Timber, sale of.

—limit.

—use of.

Charlton Code, sec. 11, p. 61.

NOTE.—This section embodies the only legislation now in force governing the use of timber in Alaska.

Penalty for willfully cutting, injuring, or destroying timber. (See Criminal Code, sec. 1946.)

See sec. 124, chap. 9, Homestead Laws, for provisions for suits brought by the Government for depredations and defenses in such actions; also for use by railroad company and owners of mineral lands, of timber, etc.

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## CHAPTER NINE.

### HOMESTEAD LAWS.

(For rules and regulations apply to Commissioner of Land Office.)


Sec.
101. Homestead laws extended to Alaska; requirements for patents; records to be filed; mineral and coal reserved; transfers permitted; church, cemetery, and rights of railways reserved.
101a. Unappropriated public lands, who may enter upon.
101b. Mode of procedure to enter upon unappropriated public lands.
101c. Patent to issue on proof of three years' residence; transfer for public purposes; leave of absence allowed; commutation; proof required if entryman dies; notice of law to entryman.
101d. When rights inure for the benefit of infant children.
101e. Persons in military or naval service, when and before whom to make affidavit.
101f. Soldiers and sailors' homestead.
101g. Deduction of military and naval service from time, etc.
101h. Widow and minor children provided for.
101i. May be filed by agent.
Sec.
102. Judicial officers before whom affidavits may be made; force and effect of affidavits; penalty for false swearing; fees for entry, etc
102a. Record of applications.
102b. Homestead lands not subject to prior debts.
103. Failure to perfect homestead entry not a bar to second, etc., entry.
104. Additional entry allowed without proof of residence. etc.; limit of acreage; patent; failure in original entry prohibits additional entry; commutation not allowed.
104a. Homestead settler may complete entry to one quarter section; patent; soldiers' certificates.
105. Second entry on homestead allowed if first lost.
106. Erroneous entries corrected; evidence of error to be found, etc.
107. Preservation of coal rights to the United States; right of owner to service; domestic use of coal, etc


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Sec.
108. Rights of settlers on public lands.
109. Entry woman's marriage not to forfeit right to homestead entry; no separate claim of land by husband.
110. Additional entry to homesteaders commuting first entry, etc.
111. Second homestead entries permitted settlers prior to May 17, 1900; proof of entry; qualifications; restriction on commutation.
112. Homestead and preemption entries; notice of final proof; publication.
112a. Completing proof; time extended.
112b. Admissibility of testimony; procedure on application for patent; adverse claimants.
113. Leave of absence on account of crops failing, etc.; absence.
114. Public lands in cases of insanity.
115. Land to revert on failure to establish residence, etc.; beginning of residence; extension permitted.
116. Failure to give notice, not to prejudice rights of entryman.
117. Provisions of homestead laws made applicable to Indians, etc.; fees and commissions for entries excluded; lands to be held in trust, etc. by United States; homestead allotments to natives; allotments inalienable and nontaxable.
118. Acquirement of title under land laws limited to 320 acres; exceptions to limitation; land patent to expressly reserve right of way for ditches, etc.
119. Commutation of homestead entries prematurely commuted: exceptions; allowance of commutation; repeal; effect.
120. Payments in advance.
121. Relinquishment of claims to lands.
Sec.
122. Notice to contestant of relinquishment of contestee's claim; fee; death of contestant not to abate rights.
123. Commissioner of land office may correct clerical errors.
124. Repeal of timber culture laws; suits to annul patents to be brought in six years; timber depredation suits in certain States, etc.; defense; railway companies; rules, etc.; timber and mineral lands.
125. Soldiers' certificates sold, declared valid.
126. Forest reserves; agricultural lands within, to be open to settlement; filing of lists; opening to entry; limit of acreage; list to be posted; advertisements; preference rights; filing plats of entries; time limit; notice; survey.
127. Additional homestead right granted; price per acre.
128. Future settlements limited within forest reserves.
128a. Board of equitable adjudication provided for; cases of suspended entries of public lands and suspended preemption land claims.
128b. Adjudications, under above, how approved.
128c. Report of adjudications under preceding sections.
128d. Decisions to be arranged into classes.
128e. Patents to issue for lands in the first class, lands in the second class to revert to the United States.
128f. Commissioner to order into market lands of second class.
128g. Disposal of surface of coal lands to States, etc.
128h. Patents surrendered and new ones issued in certain cases.
128i. Extent of foregoing provisions.

Mar. 3, 1903.

32 Stat. L., 1028.
Homestead laws extended to Alaska.
Vol. 30, p. 409, amended.

SEC. 101. That all the provisions of the homestead laws of the United States not in conflict with the provisions of this act, and all rights incident thereto, are hereby extended to the district of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency, or lieu land selections pertaining to any land grant outside of the district of Alaska shall be made, and no land scrip or land warrant of any kind whatsoever shall be located within or exercised upon any lands in said district except as now provided by law; and provided further that no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right; and provided further that no location of scrip, selection, or right along any navigable or other waters shall be made within the distance of eighty rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise; and provided further that no commutation privileges shall be allowed in excess of one hundred and sixty acres included in any homestead entry under the provisions hereof: *Provided*, That no entry shall be allowed extending more than one hundred and sixty rods along the shore of any navigable

Restriction as to indemnity, etc., selections.

Maximum entries.

Locations on water banks.

Commutation.

*Provisos.*
Reservations on navigable waters.

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water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims; and that nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district; and no patent shall issue hereunder until all the requirements of sections twenty-two hundred and ninety-one, twenty-two hundred and ninety-two, and twenty-three hundred and five of the Revised Statutes of the United States have been fully complied with as to residence, improvements, cultivation, and proof except as to commuted lands as herein provided: *And it is further provided*, That every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the district of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations hereof, be entitled to enter three hundred and twenty acres or a less quantity of unappropriated public land in said district of Alaska. If any of the land so settled upon, or to be settled upon, is unsurveyed, then the land settled upon, or to be settled upon, must be located in a rectangular form, not more than one mile in length, and located by north and south lines run according to the true meridian; that the location so made shall be marked upon the ground by permanent monuments at each of the four corners of the said location, so that the boundaries of the same may be readily and easily traced; that the record of said location shall, within ninety days from the date of settlement, be filed for record in the recording district in which the land is situated. Said record shall contain the name of the settler, the date of the settlement, and such a description of the land settled upon, by reference to some natural object or permanent monument, as will identify the same; and, if after the expiration of the said period of five years or at such date as the settler may desire to commute the public surveys of the United States have not been extended over the land located, a patent shall nevertheless issue for the land included within the boundaries of said location as thus recorded, upon proof to be submitted to the register and receiver of the proper land office, upon proof that he is a citizen of the United States, and upon the further proof required by section twenty-two hundred and ninety-one of the Revised Statutes of the United States as heretofore and herein amended, and under the procedure in the obtaining of patents to the unsurveyed lands of the United States, as provided for by section* ten of the act hereby amended, and under such rules and regulations as shall be prescribed by the Secretary of the Interior as hereinbefore provided, without the payment of any purchase price or other charges, except the ordinary office fees and commissions of the register and receiver except one dollar and twenty-five cents per acre on land commuted: *And provided always*, That no title shall be obtained hereunder to any of the mineral or coal lands of the district of Alaska: *And it is further provided*, That any bona fide settler under the preemption, homestead, or other settlement law, shall have the right to transfer, by warranty against his own act, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, telegraph, telephones, canals, reservoirs, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim.

No entries of shores.

Patent requirements. R. S., secs. 2291, 2292, 2305, pp. 420, 422.

Maximum entry increased.

Location on unsurveyed lands.

Records to be filed.

Issue of patent.

R. S., sec. 2291, p. 420.

Vol. 30, p. 414.

Payments.

Mineral.

Mar. 3, 1905.

33 Stat. L., 991.

Homestead settlers' right of transfer of.

R. S., sec. 2288, p. 419, amended.

Charlton Code, pp. 93–94.

* NOTE.—Section 10 referred to in the foregoing section will be found in chapter 2, section 92, supra, and for section 2291, as amended June 6, 1912, see section 101c or 2301; and for 2292 and 2305, referred to in the foregoing section, see sections 101d and 101g, ante.

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Widow or minor children of deceased entitled to remain in possession (see Code of Civil Procedure, sec. 1647).

Exemption of homesteads from judicial sale (see Code of Civil Procedure, sec. 1104).

Mar. 3, 1891.
26 Stat. L., 1095.
R. S. 2289.
Who may enter certain unappropriated public lands.
May 20, 1862, c. 75, sec. 1, vol. 12, p. 392.
Feb. 11, 1874, c. 25, vol. 18, p. 15.
Mar. 13, 1874, c. 55, vol. 18, p. 22.
June 22, 1874, c. 400, vol. 18, p. 194.
Feb. 23, 1875, c. 99, vol. 18, p. 334.
Mar. 3, 1875, c. 131, secs. 15, 16, vol. 18, p. 420.
Apr. 21, 1875, c. 72, vol. 19, p. 35.
Mar. 3, 1877, c. 127, vol. 19, p. 405.

SEC. 101a. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter-section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Ibid.
R. S. 2290.
Mode of procedure.
May 20, 1862, c. 75, sec. 2, vol. 12, p. 392.
Mar. 21, 1864, c. 38, sec. 2, vol. 13, p. 35.
June 21, 1866, c. 127, sec. 2, vol. 14, p. 67.
June 22, 1874, c. 394, vol. 18, p. 192.
Mar. 3, 1875, c. 131, secs. 15, 16, vol. 18, p. 420.

SEC. 101b. That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person, except himself, or herself, and upon filing such affidavit with the register or receiver on payment of five dollars, when the entry is of not more than eighty acres, and on payment of ten dollars, when the entry is for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified.

June 6, 1912.
37 Stat. L., 123.
Patent to issue on proof of three years' residence, etc.
R. S., sec. 2291, p. 420, amended.

SEC. 101c. No certificate, however, shall be given or patent issued therefor until the expiration of three years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry, or if he be dead his widow, or in case of her death his heirs or devisee, or in case of a widow making such entry her heirs or devisee, in case of her death, proves by himself and by two credible witnesses that he, she, or they have a habitable house upon the land and have actually resided upon and cultivated the same for the term of three years succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States, then in such case he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law: *Provided*, That upon filing in the local land office notice of the beginning of such absence, the entryman shall be entitled to a continuous leave of absence from the land for a period not exceeding five months

Transfer for public purposes.
R. S., sec. 2288, p. 419.

*Provisos.*
Leaves of absence allowed.

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in each year after establishing residence, and upon the terimnation of such absence the entryman shall file a notice of such termination in the local land office, but in case of commutation the fourteen months' actual residence as now required by law must be shown, and the person commuting must be at the time a citizen of the United States: *Provided*, That when the person making entry dies before the offer of final proof those succeeding to the entry must show that the entryman had complied with the law in all respects to the date of his death and that they have since complied with the law in all respects, as would have been required of the entryman had he lived, excepting that they are relieved from any requirement of residence upon the land: *Provided further*, That the entryman shall, in order to comply with the requirements of cultivation herein provided for, cultivate not less than one-sixteenth of the area of his entry, beginning with the second year of the entry, and not less than one-eighth, beginning with the third year of the entry, and until final proof, except that in the case of entries under section six of the enlarged-homestead law double the area of cultivation herein provided shall be required, but the Secretary of the Interior may, upon a satisfactory showing, under rules and regulations prescribed by him, reduce the required area of cultivation: *Provided*, That the provisions of this section relative to the homestead period shall apply to all unperfected entries as well as entries hereafter made upon which residence is required: *Provided*, That the Secretary of the Interior shall, within sixty days after the passage of this Act, send a copy of the same to each homestead entryman of record who may be affected thereby, by ordinary mail to his last known address, and any such entryman may, by giving notice within one hundred and twenty days after the passage of this Act, by registered letter to the register and receiver of the local land office, elect to make proof upon his entry under the law under which the same was made without regard to the provisions of this act.

Commutation.

Proof required if entryman dies.

Area of cultivation required yearly.

For enlarged homesteads.

Vol. 35, p. 640.

Nebraska arid land and irrigation entries.

Vol. 33, p. 547.

Vol. 32, p. 388.

Notice of law to entrymen.

SEC. 101d. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State or district in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified.

June 21, 1866.

14 Stat. L., 67.

R. S., 2292.

When rights inure to the benefit of infant children.

SEC. 101e. In case of any person desirous of availing himself of the benefits of this chapter, but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land office which the preceding sections require, and whose family, or some member thereof, is residing on the land which he desires to enter and upon which a bona fide improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law.

R. S., 2293.

Persons in military or naval service, when and before whom to make affidavit.

Mar. 21, 1864, c. 38, sec. 4, vol. 13, p. 35.

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March 1, 1901.
31 Stat. L., 847.
R. S., 2304.
Soldiers and sailors' homestead.

SEC. 101f. Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, and every private soldier and officer who has served in the Army of the United States during the Spanish war, or who has served, is serving, or shall have served in the said Army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement.

June 8, 1872, c. 338, sec. 1, vol. 17, p. 333.

Ibid.
Amends.
June 8, 1872.
17 Stat. L., 333.
R. S., 2305.
Deduction of military and naval service from time, etc.

SEC. 101g. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: *Provided*, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive Government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine

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died while in the service of the United States as hereinbefore described, the patent for such land shall issue.

* * * * * * *

Ibid.
Widow and minor children provided for.

SEC. 101h. In case of the death of any person who would be entitled to a homestead under the provisions of section two thousand three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvement therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

* * * * * * *

Ibid.
May be filed by agent.

SEC. 101i. Every soldier, sailor, marine, officer, or other person coming within the provisions of section two thousand three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in preemption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill the requirements of the law.

Mar. 4, 1904.
33 Stat. L., 59.
R. S., 2294.
32 S. L., p. 63, amended.

SEC. 102. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

Judicial officers before whom affidavits, etc., may be made.
County and parish added.
*Proviso.*
Affidavits taken out of county.
Force and effect of affidavits.
Penalty for false swearing.
Fees for entries, etc.

"For each affidavit, twenty-five cents.

"For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

"For each deposition of claimant or witness, prepared by the officer, one dollar.

"Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars."

Penalty for excessive fees.

NOTE.—For prior acts providing for affidavits, proofs, fees, etc., see 19 Stat. L., 403, R. S. 2391; also 32 Stat. L., 63; see also 26 Stat. L., 121.



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R. S., sec. 2295, p. 421. Record of applications.

SEC. 102a. The register of the land office shall note all applications under the provisions of this chapter on the tract books and plats of his office, and keep a register of all such entries and make return thereof to the General Land Office, together with the proof upon which they have been founded.

R. S., sec. 2296, p. 421. Homestead lands not subject to prior debts.

SEC. 102b. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

Apr. 8, 1904.

33 Stat. L., 527. Failure to perfect homestead entry not a bar to second, etc., entry. Conditions.

SEC. 103. That any person who has heretofore made entry under the homestead laws, but who shall show to the satisfaction of the Commissioner of the General Land Office that he was unable to perfect the entry on account of some unavoidable complication of his personal or business affairs or on account of an honest mistake as to the character of the land, that he made a bona fide effort to comply with the homestead law, and that he did not relinquish his entry or abandon his claim for a consideration shall be entitled to the benefit of the homestead laws as though such former entry had not been made.

Apr. 28, 1904.

33 Stat. L., 527. Additional entry allowed without proof of residence, etc. Limit of acreage. Patent. *Provisos.* Exception. Failure in original entry prohibits additional entry. Commutation not allowed. R. S., sec. 2301, p. 421.

SEC. 104. That any homestead settler who has heretofore entered or may hereafter enter less than one-quarter section of land may enter other and additional land lying contiguous to the original entry which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres, without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and cultivation has been made for the original entry when the additional entry is made, then the patent shall issue without further proof: *Provided*, That this section shall not apply to or for the benefit of any person who does not own and occupy the lands covered by the original entry: *And provided*, That if the original entry shall fail for any reason prior to patent, or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or, if having been initiated, shall be canceled. That commutation under the provisions of section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this act.

Mar. 2, 1889.

25 Stat. L., 855. Homestead settlers. May complete entry to one-quarter section. *Provisos.* Patent. Soldiers' certificates.

SEC. 104a. That every person entitled, under the provisions of the homestead laws, to enter a homestead who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled under said laws to enter as a personal right, and not assignable, by legal subdivisons of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by him shall not exceed one hundred and sixty acres: *Provided*, That in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered and otherwise fully complied with such laws: *Provided, also*, That this section shall not be construed as affecting any rights as to location of soldiers' certificates heretofore issued under section twenty-three hundred and six of the Revised Statutes.

Feb. 3, 1911.

36 Stat. L., 896. Second desert-land, etc., entries allowed, if first lost, etc. Vol. 35, p. 6, amended. *Proviso.* Parties excluded.

SEC. 105. Any person who, prior to the approval of this act, has made entry, under the homestead or desert-land laws, but who, subsequently to such entry, from any cause shall have lost, forfeited, or abandoned the same, shall be entitled to the benefits of the homestead or desert-land laws as though such former entry had not been made, and any person applying for a second homestead or desert-land entry under this act shall furnish a description and the date of his former entry: *Provided*, That the provisions of this act shall not

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apply to any person whose former entry was canceled for fraud, or who relinquished his former entry for a valuable consideration in excess of the filing fees paid by him on his original entry.

Feb. 14, 1909.
35 Stat. L., 645.
Erroneous entries corrected.

SEC. 106. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or, if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

Evidence of error to be filed.

R. S., sec. 2372, p. 434, amended.

Transmission of to General Land Office.

Change of entry, etc.

Oath of beneficiary to be corroborated.

Mar. 3, 1909.
35 Stat. L., 844.
Preservation of coal rights to United States.

SEC. 107. That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: *Provided*, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: *Provided further*, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Disposal under coal-land laws.

Right of owner of surface.

*Provisos.*
Domestic use of coal.

Rights of entryman.

May 14, 1880.
21 Stat. L., 142.

SEC. 108. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States land office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under the preemption laws.

Rights of settlers on public lands.

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June 6, 1900.
31 Stat. L., 683. Vol. 21, p. 141.
Entrywoman's marriage not to forfeit right to homestead entry.

SEC. 109. Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not on account of her marriage forfeit her right to make entry and receive patent for the land: *Provided*, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: *Provided further*, That the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law.

*Provisos.*
—to be otherwise qualified, etc.
—no separate claim of land by husband.

Scope of act.

That this act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage.

June 5, 1900.
31 Stat. L., 270.
Additional entry to homesteaders commuting first entry, etc.

SEC. 110. That any person who has heretofore made entry under the homestead laws and commuted same under provisions of section twenty-three hundred and one of the Revised Statutes of the United States and the amendments thereto shall be entitled to the benefits of the homestead laws, as though such former entry had not been made, except that commutation under the provisions of section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this section of this act.

R. S., sec. 2301, p. 421, amended.
May 22, 1902.
32 Stat. L., 203.
Second homestead entries permitted settlers prior to May 17, 1900.

SEC. 111. That any person who, prior to the passage of an act entitled "An act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved May seventeenth, nineteen hundred, having made a homestead entry and perfected the same and acquired title to the land by final entry by having paid the price provided in the law opening the land to settlement, and who would have been entitled to the provisions of the act before cited had final entry not been made prior to the passage of said act, may make another homestead entry of not exceeding one hundred and sixty acres of any of the public lands in any State or Territory subject to homestead entry: *Provided*, That any person desiring to make another entry under this act will be required to make affidavit, to be transmitted with the other filing papers now required by law, giving the description of the tract formerly entered, date and number of entry, and name of the land office where made, or other sufficient data to admit of readily identifying it on the official records: *And provided further*, That said person has all the other proper qualifications of a homestead entryman: *And provided also*, That commutation under section twenty-three hundred and one of the Revised Statutes, or any amendment thereto, or any similar statute, shall not be permitted of an entry made under this act, excepting where the final proof, submitted on the former entry hereinbefore described, shows a residence upon the land covered thereby for the full period of five years, or such term of residence thereon as added to any properly credited military or naval service shall equal such period of five years.

*Provisos.*
Proof of former entry.

Qualification.

Restriction on commutation.
R. S., sec. 2301, p. 421.
Vol. 26, p. 1098.

Mar. 3, 1879.
20 Stat. L., 472.
Homestead and preemption entries.

SEC. 112. Before final proof shall be submitted by any person claiming to enter agricultural lands under the laws providing for preemption or homestead entries, such person shall file with the register of the proper land office a notice of his or her intention to make such proof, stating therein the description of lands to be entered, and the names of the witnesses by whom the necessary facts will be established.

Notice of final proof.

Publication.

Upon the filing of such notice the register shall publish a notice that such application has been made once a week for the period of thirty days, in a newspaper to be by him designated as published nearest to such land, and he shall also post such notice in some con-

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spicuous place in his office for the same period. Such notice shall contain the names of the witnesses as stated in the application. At the expiration of said period of thirty days the claimant shall be entitled to make proof in the manner heretofore provided by law. The Secretary of the Interior shall make all necessary rules for giving effect to the foregoing provisions.

Mar. 2, 1889.
25 Stat. L., 854.
Completing proof.
Vol. 20, p. 472.
Time extended.

SEC. 112a. The "Act to provide additional regulations for homestead and preemption entries of public lands," approved March third, eighteen hundred and seventy-nine, shall not be construed to forbid the taking of testimony for final proof within ten days following the day advertised as upon which such final proof shall be made, in cases where accident or unavoidable delays have prevented the applicant or witnesses from making such proof on the date specified.

May 14, 1898.
30 Stat. L., 413.
Admissibility of testimony.
Procedure on application for patent.

SEC. 112b. That all affidavits, testimony, proofs and other papers provided for by this act and by said act of March third, eighteen hundred and ninety-one, or by any departmental or executive regulation thereunder, by depositions or otherwise, under commission from the register and receiver of the land office, which may have been or may hereafter be taken and sworn to anywhere in the United States, before any court, judge, or other officer authorized by law to administer an oath, shall be admitted in evidence as if taken before the register and receiver of the proper local land office. And thereafter such proof, together with a certified copy of the field notes and plat of the survey of the claim, shall be filed in the office of the surveyor general of the District of Alaska, and if such survey and plat shall be approved by him, certified copies thereof, together with the claimant's application to purchase, shall be filed in the United States land office in the land district in which the claim is situated, whereupon, at the expense of the claimant, the register of such land office shall cause notice of such application to be published for at least sixty days in a newspaper of general circulation published nearest the claim within the District of Alaska, and the applicant shall, at the time of filing such field notes, plat, and application to purchase in the land office, as aforesaid, cause a copy of such plat, together with the application to purchase, to be posted upon the claim, and such plat and application shall be kept posted in a conspicuous place on such claim continuously for at least sixty days, and during such period of posting and publication, or within thirty days thereafter, any person, corporation, or association having or asserting any adverse interest in, or claim to, the tract of land or any part thereof sought to be purchased may file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

Adverse claimants.

Mar. 2, 1889.
25 Stat. L., 854.
Leave of absence on account of crops failing, etc.

SEC. 113. Whenever it shall be made to appear to the register and receiver of any public land office, under such regulations as the Secretary of the Interior may prescribe, that any settler upon the public domain under existing law is unable by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her upon the lands settled upon, then such register and receiver may grant to such settler a leave of absence from the claim upon which he or she has filed for a period not exceeding one year at any one time, and such settler so granted leave of absence shall forfeit no rights by reason of such absence: *Provided*, That the time of

*Proviso.*
Absence.

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such actual absence shall not be deducted from the actual residence required by law.

June 8, 1880.
21 Stat. L., 166.
Public lands in cases of insanity.

SEC. 114. In all cases in which parties who regularly initiated claims to public lands as settlers thereon according to the provisions of the preemption or homestead laws, have become insane or shall hereafter become insane before the expiration of the time during which their residence, cultivation, or improvement of the land claimed by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and thereupon their claims shall be confirmed and patented, provided it shall be shown by proof satisfactory to the Commissioner of the General Land Office that the parties complied in good faith with the legal requirements up to the time of their becoming insane, and the requirement in homestead entries of an affidavit of allegiance by the applicant in certain cases as a prerequisite to the issuing of the patents shall be dispensed with so far as regards such insane parties.

June 6, 1912.
37 Stat. L., 124.
Land to revert on failure to establish residence, etc.
R. S., sec. 2297, p. 421, amended.

SEC. 115. If, at any time after the filing of the affidavit as required in section twenty-two hundred and ninety and before the expiration of the three years mentioned in section twenty-two hundred and ninety-one, it is proved, after due notice to the settler, to the satisfaction of the register of the land office that the person having filed such affidavit has failed to establish residence within six months after the date of entry, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government: *Provided*, That the three years' period of residence herein fixed shall date from the time of establishing actual permanent residence upon the land: *And provided further*, That where there may be climatic reasons, sickness, or other unavoidable cause, the Commissioner of the General Land Office may, in his discretion, allow the settler twelve months from the date of filing in which to commence his residence on said land under such rules and regulations as he may prescribe.

*Provisos.*
Beginning of residence.
Extension permitted.

August 24, 1912.
37 Stat. L., 455.
Failure to give notice not to prejudice rights of entryman.

SEC. 116. That the failure of a homestead entryman to give notice of election of making his proof as required by the act of June sixth, nineteen hundred and twelve, being an act to amend sections twenty-two hundred and ninety-one and twenty-two hundred and ninety-seven of the Revised Statutes of the United States relating to homesteads, shall not in anywise prejudice his rights to proceed in accordance with the law under which such entry was made.

July 4, 1884.
23 Stat. L., 96.
Provisions of homestead laws made applicable to Indians, etc.

SEC. 117. Such Indians as may now be located on public lands, or as may, under the direction of the Secretary of the Interior, or otherwise, hereafter, so locate may avail themselves of the provisions of the homestead laws as fully and to the same extent as may now be done by citizens of the United States; and to aid such Indians in making selections of homesteads and the necessary proofs at the proper land offices, one thousand dollars, or so much thereof as may be necessary, is hereby appropriated; but no fees or commissions shall be charged on account of said entries or proofs. All patents therefor shall be of the legal effect, and declare that the United States does and will hold the land thus entered for the period of twenty-five years, in trust for the sole use and benefit of the Indian by whom such entry shall have been made, or, in case of his decease, of his widow and heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his widow and heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

Fees and commissions for entries excluded.

Lands to be held in trust, etc., by United States.

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May 17, 1906.
34 Stat. L., 197.
Alaska.
Homestead allotments to natives.

The Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the district of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family, or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres.

Allotments inalienable and nontaxable.
Preference rights.

Aug. 30, 1890.
26 Stat. L., 391.
Acquirement of title under land laws limited to 320 acres.

SEC. 118. No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.

Exceptions to limitation.

*Proviso.*
Land patent to expressly reserve right of way for ditches, etc.

June 3, 1896.
29 Stat. L., 197.
Public lands.
Commutation of homestead entries prematurely commuted.
R. S., sec. 2301, p. 421.

SEC. 119. That whenever it shall appear to the Commissioner of the General Land Office that an error has heretofore been made by the officers of any local land office in receiving premature commutation proofs under the homestead laws, and that there was no fraud practiced by the entryman in making such proofs, and final payment has been made and a final certificate of entry has been issued to the entryman, and that there are no adverse claimants to the land described in the certificates of entry whose rights originated prior to making such final proofs, and that no other reason why the title should not vest in the extryman exists except that the commutation was made less than fourteen months from the date of the homestead settlement, and that there was at least six months' actual residence in good faith by the homestead entryman on the land prior to such commutation, such certificates of entry shall be in all things confirmed to the entryman, his heirs and legal representatives, as of the date of such final certificate of entry and a patent issue thereon; and the title so patented shall inure to the benefit of any grantee or transferee in good faith of such entryman subsequent to the date of such final certificate: *Provided*, That this act shall not apply to commutation and homestead entries on which final certificates have been issued and which have heretofore been canceled when the lands made vacant by such cancellation have been reentered under the homestead act.

*Proviso.*
Exception.

Allowance of commutation.

That all commutations of homestead entries shall be allowed after the expiration of fourteen months from date of settlement. That all acts and parts of acts in conflict with any of the provisions of this act are hereby repealed. That this act shall take effect and be in force from and after its passage and approval.

Repeal, etc.
Effect.

Mar. 3, 1891.
26 Stat. L., 1098.
Payments in advance.

SEC. 120. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty-nine from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months.

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May 14, 1880.
21 Stat. L., 142.
Relinquishment of claims to lands.

SEC. 121. When a preemption, homestead, or timber-culture claimant shall file a written relinquishment of his claim in the local land office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

NOTE.—Query: Whether preemption and timber-culture laws are applicable to Alaska.

July 26, 1892.
27 Stat. L., 270.
Vol. 21, p. 141, amended.
Notice to contestant of relinquishment of contestee's claim.
*Provisos.*
Fee.
Death of contestant not to abate rights.

SEC. 122. In all cases where any person has contested, paid the land-office fees, and procured the cancellation of any preemption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands: *Provided*, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant and not to be reported: *Provided further*, That should any such person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States, may continue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have been if his death had not occurred.

Mar. 3, 1891.
26 Stat. L., 1098.
Commissioner of Land Office may correct clerical errors.

SEC. 123. That whenever it shall appear to the Commissioner of the General Land Office that a clerical error has been committed in the entry of any of the public lands such entry may be suspended, upon proper notification to the claimant, through the local land office, until the error has been corrected; and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and certificates issued and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to the first day of March, eighteen hundred and eighty-eight, and after final entry, to bona fide purchasers, or incumbrancers, for a valuable consideration, shall, unless, upon an investigation by a Government agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the Land Department of such sale or incumbrance: *Provided*, That after the lapse of two years from the date of issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under this act, and where there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor.

Charlton Code, sec. 7, p. 35.

Mar. 3, 1891.
26 Stat. L., 1093.
Repeal of timber-culture laws.
*Post*, p. 1099, amended.
Suits to annul patents to be brought in six years.
Timber depredation suits in certain States, etc.
Defense.

SEC. 124. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. And in the District of Alaska, in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing, or domestic purposes under rules and regulations made and prescribed by the Secretary of the Interior and has not been transported out of the same, but nothing herein contained

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shall operate to enlarge the rights of any railway company to cut timber on the public domain, provided that the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this act, and he may designate the sections or tracts of land where timber may be cut, and it shall not be lawful to cut or remove any timber except as may be prescribed by such rules and regulations, but this act shall not operate to repeal the act of June third, eighteen hundred and seventy-eight, providing for the cutting of timber on mineral lands.

Railway companies.

Rules, etc.

Timber on mineral lands. Vol. 20, p. 88.

Charlton Code, p. 35.

NOTE.—Query: Whether this section is in conflict with special legislation referring to timber cutting and railroad companies' right.

SEC. 125. All soldiers' additional homestead certificates heretofore issued under the rules and regulations of the General Land Office under section twenty-three hundred and six of the Revised Statutes of the United States, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March tenth, eighteen hundred and seventy-seven, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are hereby, declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been or may hereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value; and all entries heretofore or hereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees.

Aug. 18, 1894.

28 Stat. L., 397.

Soldiers' certificates sold, declared valid.

R. S., sec. 2306, p. 422.

NOTE.—*Soldiers' additional homestead rights.*—Sections 2303 to 2309, R. S., are extended to Alaska by the first section of the act of May 14, 1898 (30 Stat., 409), subject to such regulations as may be made by the Secretary of the Interior, which act is also amended by the act of March 3, 1903 (32 Stat., 1028), which specifically provides that not more than 160 acres shall be entered in any single body under soldiers' additional homestead rights. The said act of May 14, 1898, provides that there shall be left the space of at least 80 rods between all entries along the shore of any navigable waters. These two restrictions are the only ones that are placed upon the location of soldiers' additional rights in Alaska. In all other respects they are handled the same as if they were filed on land within the United States proper, except that the publication and posting required in connection with these rights are those provided by section 10, of the act of May 14, 1898.

NOTE.—See also sec. 101, supra.

SEC. 126. The Secretary of Agriculture may, in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain as to the location and extent of lands within permanent or temporary forest reserves, except the following counties in the State of California, Inyo, Tulare, Kern, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego; which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and file the lists and descriptions with the Secretary of the Interior, with the request that the said lands be opened to entry in accordance with the provisions of the homestead laws and this act.

June 11, 1906.

34 Stat. L., 253.

Forest reserves.

Agricultural lands within, to be opened to settlement.

Counties in California excepted.

Filing of lists, etc.

Upon the filing of any such list or description the Secretary of the Interior shall declare the said lands open to homestead settlement and entry in tracts not exceeding one hundred and sixty acres in area and not exceeding one mile in length, at the expiration of sixty days from the filing of the list in the land office of the district within which the lands are located, during which period the said list or description shall be prominently posted in the land office and advertised for a period of not less than four weeks in one newspaper of general circulation pub-

Opening to entry. Limit of acreage, etc.

Lists to be posted.

Advertisement.

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*Provisos.* Preference rights.

lished in the county in which the lands are situated: *Provided*, That any settler actually occupying and in good faith claiming such lands for agricultural purposes prior to January first, nineteen hundred and six, and who shall not have abandoned the same, and the person, if qualified to make a homestead entry, upon whose application the land proposed to be entered was examined and listed, shall, each in the order named, have a preference right of settlement and entry: *Provided further*, That any entryman desiring to obtain patent to any lands described by meets and bounds entered by him under the provisions of this act shall, within five years of the date of making settlement, file with the required proof of residence and cultivation, a plat and field notes of the lands entered, made by or under the direction of the United States Surveyor General, showing accurately the boundaries of such lands, which shall be distinctly marked by monuments on the ground, and by posting a copy of such plat, together with a notice of the time and place of offering proof, in a conspicuous place on the land embraced in such plat during the period prescribed by law for the publication of his notice of intention to offer proof, and that a copy of such plat and field notes shall also be kept posted in the office of the register of the land office for the land district in which such lands are situated for a like period; and further, that any agricultural lands within forest reserves may, at the discretion of the Secretary, be surveyed by metes and bounds, and that no lands entered under the provisions of this act shall be patented under the commutation provisions of the homestead laws, but settlers, upon final proof, shall have credit for the period of their actual residence upon the lands covered by their entries.

Filing plats, etc., of entries.

Time limit.

Notice.

Survey.

June 11, 1906.
34 Stat. L., 253.

Additional homestead right granted.

Price per acre.

SEC. 127. That settlers upon lands chiefly valuable for agriculture within forest reserves on January first, nineteen hundred and six, who have already exercised or lost their homestead privilege, but are otherwise competent to enter lands under the homestead laws, are hereby granted an additional homestead right of entry for the purposes of this act only, and such settlers must otherwise comply with the provisions of the homestead law, and in addition thereto must pay two dollars and fifty cents per acre for lands entered under the provisions of this section, such payment to be made at the time of making final proof on such lands.

June 11, 1906.
34 Stat. L., 233.

Future settlements limited within forest reserves.

SEC. 128. Nothing herein contained shall be held to authorize any future settlement on any lands within forest reserves until such lands have been open to settlement as provided in this act, or to in any way impair the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve.

R. S., 2450.
Board of equitable adjudication provided for.
Cases of "suspended entries of public lands" and "suspended preemption land claims."

SEC. 128a. The Commissioner of the General Land Office is authorized to decide upon the principles of equity and justice, as recognized in courts of equity and in accordance with regulations to be settled by the Secretary of the (*Treasury*), (Interior) the Attorney General, and the commissioner, conjointly, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.

R. S., 2451.
Adjudications under above, how approved.

SEC. 128b. Every such adjudication shall be approved by the Secretary of the (*Treasury*), (Interior) and the Attorney General, acting as a board, and shall operate only to divest the United States of the title of the lands embraced thereby, without prejudice to the rights of conflicting claimants.

R. S., 2452.
Report of adjudications under preceding sections.

SEC. 128c. The commissioner is directed to report to Congress at the first session after any such adjudications have been made a list of the same under the classes prescribed by law, with a statement of the principles upon which each class was determined.

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R. S., 2453. Decisions to be arranged into classes.

SEC. 128d. The commissioner shall arrange his decisions into two classes, the first class to embrace all such cases of equity as may be finally confirmed by the board and the second class to embrace all such cases as the board reject and decide to be invalid.

R. S., 2454. Patents to issue for lands in the first class, and lands in the second class to revert to the United States. Mar. 28, 1912. 37 Stat. L., 79.

SEC. 128e. For all lands covered by claims which are placed in the first class patents shall issue to the claimants, and all lands embraced by claims placed in the second class shall ipso facto revert to and become part of the public domain.

R. S., 2455. Commissioner to order into market lands of second class.

SEC. 128f. It shall be lawful for the Commissioner of the General Land Office to order into market and sell at public auction, at the land office of the district in which the land is situated, for not less than one dollar and twenty-five cents an acre, any isolated or disconnected tract or parcel of the public domain not exceeding one-quarter section which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land officers of the district in which such land may be situated: *Provided*, That any legal subdivisions of the public land, not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of said Commissioner, be ordered into the market and sold pursuant to this act upon the application of any person who owns lands or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this act: *Provided further*, That this act shall not defeat any vested right which has already attached under any pending entry or location.

April 30, 1912. 37 Stat. L., 105. Disposal of surface of coal lands to States, etc.

SEC. 128g. That * * * unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall * * * be subject * * * to disposition * * * under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in such lands so * * * sold, and of the right to prospect for, mine, and remove the same in accordance with the provisions of the act of June twenty-second, nineteen hundred and ten, and such lands shall be subject to all the conditions and limitations of said act.

R. S., 2456. Patents surrendered and new ones issued in certain cases.

SEC. 128h. Where patents have already been issued on entries which are confirmed by the officers who are constituted the board of adjudication the Commissioner of the General Land Office, upon the canceling of the outstanding patent, is authorized to issue a new patent on such confirmation to the person who made the entry, his heirs or assigns.

R. S., 2457. Extent of foregoing provisions.

SEC. 128i. The preceding provisions from section twenty-four hundred and fifty to section twenty-four hundred and fifty-six, inclusive, shall be applicable to all cases of suspended entries and locations which have arisen in the General Land Office since the twenty-sixth day of June, eighteen hundred and fifty-six, as well as to all cases of a similar kind which may hereafter occur, embracing as well locations under bounty-land warrants as ordinary entries or sales, including homestead entries and preemption locations or cases where the law has been substantially complied with and the error or informality arose from ignorance, accident, or mistake which is satisfactorily explained, and where the rights of no other claimant or preemptor are prejudiced or where there is no adverse claim.

NOTE.—The sections referred to in section 128i are the sections numbered 128a–128i of this chapter.

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# CHAPTER TEN.

## MINERAL LANDS AND MINING RESOURCES.

(For rules and regulations, apply to the Commissioner of Land Office.)

Sec.
129. Mining laws extended to Alaska; gold, etc., explorations on Bering Sea; miners' regulations not to conflict with Federal laws; exclusive permits to mine void, etc.; provision reserving roadway, etc., not to apply.
NOTE.—Sections of R. S. extended to Alaska; also reference to act of May 17, 1884 (23 Stat. L., 24), extending mining laws to Alaska, establishing land district, etc., and copy of said act.
129a. Location, placer mining claim.
129b. Location by attorney, must be by power of attorney in writing.
129c. Only two placer mining claims in any calendar month.
129d. Patenting of placer mining claim.
129e. When placer mining claim void.
130. Mineral lands reserved from sale, except as expressly directed by law.
131. Valuable mineral deposits in public lands, and the lands to be opened to citizens, etc.
132. Length of mining claims upon veins or lodes; width; end lines.
133. Proof of citizenship.
134. Certain exclusive rights to locators of mining claims.
135. Owners of tunnels to have what rights of possession of certain veins or lodes. What to be deemed an abandonment of right.
136. Regulations by miners. [This section is amended by sections 153, 154, and 155.]
137. Patents for mineral lands; how obtained. [This section amended by section 156.]
138. Adverse claims; proceedings on. [This section is amended by sections 157, 158, 159, and 163.]
139. Description of mining vein or lode claim; patents to conform to official monuments.
140. Pending applications; existing rights.
141. Conformity of placer claims to surveys, limit of.
142. Subdivisions of ten-acre tracts; maximum of placer locations.
143. Conformity of placer claims to surveys, limitation of claims.
144. What evidence of possessions, etc., to establish a right to a patent.
145. Proceedings for patent for placer claim, etc.
146. Surveyor general to appoint surveyors of mining claims, etc.
147. Verification of affidavits, etc.
148. Where veins intersect, etc.
Sec.
149. Patents for nonmineral lands may be included.
150. What conditions of sale may be made by local legislature.
151. Vested rights to use of water for mining, etc.; right of way for canals.
152. Patents, preemptions, and homesteads subject to vested and accrued water rights.
153. Claim located prior to May 10, 1872, first annual expenditure extended to Jan. 1, 1875. (Amends sec. 136.)
154. Money expended in a tunnel considered as expended on the lode. (Amends sec. 136.)
155. On unpatented claims period commences on Jan. 1 succeeding date of location. (Amends sec. 136.)
156. Application for patent may be made by authorized agent. (Amends sec. 137.)
157. In action brought title not established in either party. (Amends sec. 138.)
158. Adverse claim may be verified by agent. (Amends sec. 138.)
159. Affidavit of citizenship; before whom made. (Amends sec. 138.)
160. Mineral-land surveys; refund of unused deposit; permanent appropriation for refunding; repayments to depositors, etc.
161. Public lands; temporary withdrawals by President for power sites, irrigation, etc., authorized; mining rights continued; exceptions; rights of bona fide oil or gas claimants; status of prior claims; homestead, etc., settlements excepted; restriction on new forest reserves; report of withdrawals to Congress.
162. Annual improvements, etc., required on mining claims; filing affidavits; contents; prima facie evidence of performance of work, etc.; forfeiture; officer before whom affidavits may be made; time of filing; fee.
163. Public lands; time extended for filing adverse mineral claims, etc., in Alaska. (Amends sec. 138.)
164. Miner's labor lien; persons entitled; preference of lien; prior valid deeds, etc., not affected.
165. Notice to be filed; form.
166. Recording claims, etc.
167. Time to bring actions.
168. Jurisdiction.

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Sec.
169. Amendments allowed before action; reasonable delay permitted.
170. Procedure; service of process; appearance, etc.; posting notice on dump; rights of adverse claimants; lien not affected.
171. Joining of parties, etc.; court allowances; waiver of right to lien void.
172. Execution of judgment; sales; extracting minerals, by marshal; by defendant, etc.; disposal of proceeds; restriction.
173. Appeals to district court; extracting minerals; payment into registry of court; release of excess of judgment, etc.; cash deposit permitted.
174. Liability for buying minerals, etc., posted; carrying away, etc., deemed larceny; prosecutions.
175. What recorded; mining claims; where instruments recorded; miners' regulations for recording, etc.; records at Dyea, etc., legalized.
176. Citizens of Canada, mining rights, etc., of.
177. Town sites on mineral lands authorized; lands entered under the mineral laws not included in restriction to 320 acres.
178. Forest reservations, when to be established.
179. Use of timber, etc., by settlers, etc.
180. Egress and ingress of settlers within reservations, etc.
181. Restoration of mineral or agricultural lands to the public domain.
182. Entry and patenting of lands containing petroleum and other mineral oils under the placer-mining laws.
183. Assessment required for oil mining claims.
184. Public lands; locators of mineral oil lands; patents not to be denied, solely for transfer before discovery, etc.
185. Mining laws extended to saline lands.
186. Entry of lands chiefly valuable for building stone under the placer-mining laws.

NOTE.—Miners may kill game for food. (See chapter 1, title 10, Game Laws, sec. 330.)

Mineral lands excepted from homestead act. (See chapter 9, Homestead Laws, sec. 101.)

Mineral lands reserved from lands sold for trade, manufacture, or other productive industry. (See chapter 2, Public Lands, sec. 92.)

Minerals reserved in lands patented for town sites. (See chapter 1, Public Lands (Town Sites), secs. 88 and 90.)

Rights of way for railroads, minerals reserved. (Title III, chapter 4, Transportation (Railroads), sec. 47.)

Removing minerals from the land of another; penalties. (See Penal Code, sec. 1946.)

License for quartz mills, $3 per stamp per year. (See Code of Criminal Procedure, sec. 2569.)

Penalty for robbing sluice boxes or trespassing on mining claims. (See Criminal Code, sec. 1955.)

Mining within limits of railroad right of way. (See Title III, chapter 4, Transportation, sec. 47.)

Private corporations authorized to operate. (See Civil Code, sec. 798.)

Provisions for the protection of the lives of miners in Territories. (See chapter 11, "Coal Lands," sec. 202.)

Provision for mine inspectors in Alaska; compensation, etc. (See chapter 11, "Coal Lands," sec. 203.)

June 6, 1900.
31 Stat. L., 329–330.

SEC. 129. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the District of Alaska: *Provided*, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*,

*Provisos.*
Gold, etc., explorations on Bering Sea.
—miners' regulations.
—not to conflict with Federal laws.

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Exclusive permits to mine void, etc.

That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of War authorizing any person or persons, corporation or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation, and the reservation of a roadway sixty feet wide, under the tenth section of the act of May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

Provision reserving roadway, etc., not to apply. Vol. 30, p. 413.

Charlton Code, p. 73, sec. 26.

In general: Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 776). Alaska Gold Min. Co. *v.* Barbridge (1 Alaska Rep., 311). Price *v.* McIntosh (1 Alaska Rep., 286). Fuller *v.* Harris (29 Fed. Rep., 814; 1 Alaska Rep., 783). Russell *v.* Dufresne (1 Alaska Rep., 486). Tornenses *v.* Melsing (109 Fed. Rep., 710; 47 C. C. A., 596; 1 Alaska Rep., 784). McKinley Ck. Min. Co. *v.* Alaska United Min. Co. (1 Alaska Rep., 784). The Tyee Con. Min. Co. *v.* Langstedt (1 Alaska Rep., 439). Behrends *v.* Goldsteen (1 Alaska Rep., 518). Bechtol *v.* Bechtol (2 Alaska Rep., 397). Ketchikan Co. *v.* Citizens Co. (2 Alaska Rep., 120). Revenue Min. Co. *v.* Balderston (2 Alaska Rep., 363). Heine *v.* Roth (2 Alaska Rep., 416). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). Thompson *v.* Burk (2 Alaska Rep., 249). U. S. *v.* Roth (2 Alaska Rep., 257). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 704). Tyee Con. Min. Co. *v.* Langstedt (121 Fed. Rep., 709; 58 C. C. A., 129; 2 Alaska Rep., 697). Overgaard *v.* Westerberg (3 Alaska Rep., 168). Cascaden *v.* Bortolis (3 Alaska Rep., 200). Pearce *v.* Sutherland (3 Alaska Rep., 303). Debney *v.* Iles (3 Alaska Rep., 438). Cook *v.* Johnson (3 Alaska Rep., 506). Bakke *v.* Latimer (3 Alaska Rep., 95). Bigelow *v.* Conradt (3 Alaska Rep., 134). Anderson *v.* Anvil Hydraulic Co. (3 Alaska Rep., 496). Chilberg *v.* Consumer's Milk Co. (3 Alaska Rep., 235). Elliott *v.* Elliott (3 Alaska Rep., 352). Sturtevant *v.* Vogel (167 Fed. Rep., 448; 93 C. C. A., 84). Halla *v.* Cowden (170 Fed Rep., 559; 95 C. C. A., 325). Bigelow *v.* Conradt (159 Fed. Rep., 868). Johanson *v.* White (160 Fed. Rep., 901). Zimmerman *v.* Funcheon (161 Fed. Rep., 859). Hanson *v.* Craig (161 Fed. Rep., 861). Leedy *v.* Lehfeldt (162 Fed. Rep., 304). Cook *v.* Klonos (164 Fed. Rep., 529). Waskey *v.* Hammer (170 Fed. Rep., 31). Hanson *v.* Craig (170 Fed. Rep., 62). Stenfield *v.* Espee (170 Fed. Rep., 325). Jones *v.* Wild Goose M. & T. Co. (177 Fed. Rep., 95). Hoogendorn *v.* Daniel (178 Fed. Rep., 765).

Tenancy: Binswanger *v.* Henninger (1 Alaska Rep., 509). Reddy *v.* Wesson (1 Alaska Rep., 570). Garside *v.* Norval (1 Alaska Rep., 19). Miller *v.* Blackett (47 Fed. Rep., 547; 1 Alaska Rep., 827). Boone *v.* Manley (2 Alaska Rep., 552). Johnson *v.* Berger (3 Alaska Rep., 151). Dettering *v.* Nordstrom (148 Fed. Rep., 81; 78 C. C. A., 157). Kjilsberg *v.* Chilberg (177 Fed. Rep., 109).

Locating agreements: Eubanks *v.* Petrie (1 Alaska Rep., 427). Binswanger *v.* Henninger (1 Alaska Rep., 509). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 705). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). McMahon *v.* Meehan & Larson (2 Alaska Rep., 278). Cascaden *v.* Dunbar (2 Alaska Rep., 408). Marks *v.* Gates (2 Alaska Rep., 519). Roberts *v.* Date (123 Fed. Rep., 238; 59 C. C. A., 242; 2 Alaska Rep., 661). Cascaden *v.* Dunbar (157 Fed. Rep., 62). Cook *v.* Klonos (164 Fed. Rep., 529). Cook *v.* Klonos (168 Fed. Rep., 700).

Possession, title, conveyances, and contracts: Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 742). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 784). Moore *v.* Steelsmith (1 Alaska Rep., 121). Malone *v.* Jackson (137 Fed. Rep., 878; 70 C. C. A., 216; 2 Alaska Rep., 711). Bulette *v.* Dodge (2 Alaska Rep., 427). Charlton *v.* Kelley (2 Alaska Rep., 532). Tyee Con. Min. Co. *v.*

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Jennings (137 Fed. Rep., 863; 70 C. C. A., 393; 2 Alaska Rep., 713). Fulkerson *v.* Chisna Min. & Imp. Co. (122 Fed. Rep., 782; 58 C. C. A., 582; 2 Alaska Rep., 737). Seliner *v.* McKay (2 Alaska Rep., 564). Cascaden *v.* Dunbar (3 Alaska Rep., 671). McQuillan *v.* Tanana Electric Co. (3 Alaska Rep., 110). Cook *v.* Johnson (3 Alaska Rep., 506). Rust *v.* McWilliams (3 Alaska Rep., 561). Rickert *v.* Mathews (3 Alaska Rep., 269). Waskey *v.* McNaught (163 Fed. Rep., 929; 90 C. C. A., 289). Eadie *v.* Chambers (172 Fed. Rep., 73; 96 C. C. A., 561). Halla *v.* Cowden (170 Fed. Rep., 559; 95 C. C. A., 325). Stamey *v.* Hemple (173 Fed. Rep., 61; 97 C. C. A., 379). Lange *v.* Robinson (148 Fed. Rep., 799). Biglow *v.* Conradt (159 Fed. Rep., 868). Johanson *v.* White (160 Fed. Rep., 901). Zimmerman *v.* Funcheon (161 Fed. Rep., 859). Hanson *v.* Craig (161 Fed. Rep., 861). Hanson *v.* Craig (170 Fed. Rep., 62). Jones *v.* Wild Goose M. & T. Co. (177 Fed. Rep., 95).

Patent proceedings: Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 785). Young *v.* Goldsteen (97 Fed. Rep., 303; 1 Alaska Rep., 785). Fuller *v.* Harris (29 Fed. Rep., 814; 1 Alaska Rep., 786). Tyee Con. Min. Co. *v.* Langstedt (1 Alaska Rep., 439). Fox's Admr. *v.* MacKay (1 Alaska Rep., 329). Nome-Sinook Min. Co. *v.* Simpson (1 Alaska Rep., 578). Behrends *v.* Goldsteen (1 Alaska Rep., 518). Allen *v.* Meyers (1 Alaska Rep., 114). Alaska Gold Min. Co. *v.* Barbridge (1 Alaska Rep., 311). Tyee Con. Min. Co. *v.* Langstedt (136 Fed. Rep., 124; 69 C. C. A., 548; 2 Alaska Rep., 706). McKay *v.* Fox (121 Fed. Rep., 487; 57 C. C. A., 439; 2 Alaska Rep., 715). Goldsteen *v.* Behrends (123 Fed. Rep., 399; 59 C. C. A., 203; 2 Alaska Rep., 716). Griffin *v.* American Gold Min. Co. (123 Fed. Rep., 283; 58 C. C. A., 301; 2 Alaska Rep., 755). Chilberg v. Consumers Milk Co. (3 Alaska Rep., 235). Nowell *v.* McBride (162 Fed. Rep., 318).

Operation of mines, quarries, and wells: Rickert *v.* Mathews (3 Alaska Rep., 269). Elliott *v.* Elliott (3 Alaska Rep., 352). McNamee *v.* Williams (3 Alaska Rep., 470). Morris *v.* Marsh (3 Alaska Rep., 140). Wimbish *v.* Cascaden (3 Alaska Rep., 147). Kelly *v.* McNamee (164 Fed. Rep., 369; 90 C. C. A., 357). Cascaden *v.* Wimbish (161 Fed. Rep., 241; 88 C. C. A., 277).

Forfeiture: Butler *v.* Good Enough Min. Co. (1 Alaska Rep., 246). Anderson *v.* Anvil Hydraulic Co. (3 Alaska Rep., 496). Debney *v.* Iles (3 Alaska Rep., 438).

Forfeiture by publication: Forderer *v.* Schmidt (146 Fed. Rep., 480). McKay *v.* Neussler (148 Fed. Rep., 86). Forderer *v.* Schmidt (154 Fed. Rep., 475). Knickerbocker *v.* Halla (162 Fed. Rep., 318; 177 Fed. Rep., 172).

Mining partnerships: Marks *v.* Gates (2 Alaska Rep., 518). McMahon *v.* Meehan & Larson (2 Alaska Rep., 278). Windmuller *v.* Clarkson (2 Alaska Rep., 298). Cascaden *v.* Dunbar (157 Fed. Rep., 62). Kelley *v.* McNamee (164 Fed. Rep., 369).

Assessment work: Walton *v.* Wild Goose M. & T. Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 713). Walton *v.* Wild Goose M. & T. Co. (194 U. S. Rep., 631; 2 Alaska Rep., 713). Malone *v.* Jackson (137 Fed. Rep., 878; 70 C. C. A., 216; 2 Alaska Rep., 713). Bakke *v.* Latimer (3 Alaska Rep., 95). Debney *v.* Iles (3 Alaska Rep., 438). McKay *v.* Neussler (148 Fed. Rep., 86). Knickerbocker *v.* Halla (162 Fed. Rep., 318). Fredericks *v.* Klauser (96 Pac. Rep., 679).

Ditches and water rights; rights of way; natural watercourses; Noland *v.* Coon (1 Alaska Rep., 336). Ketchikan Co. *v.* Citizens Co. (2 Alaska Rep., 120). Revenue Min. Co. *v.* Balderston (2 Alaska Rep., 363). Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A., 459; 2 Alaska Rep., 717). Miocene Ditch Co. *v.* Lyng (138 Fed. Rep., 544; 70 C. C. A., 458; 2 Alaska Rep., 673). Steele *v.* Tanana Mines Ry. Co. (2 Alaska Rep., 451). Miocene Ditch Co. *v.* Jacobson (2 Alaska Rep., 557). Miocene Ditch Co. *v.* Jacobson (146 Fed. Rep., 680). McFarland *v.* Alaska Perseverance Min. Co. (3 Alaska Rep., 308). Miocene Ditch Co. *v.* Campion Min. & Trading Co. (3 Alaska Rep., 572). Madigan *v.* Kougarok Min. Co. (3 Alaska Rep., 63). Thorndyke *v.* Alaska Perseverance Min. Co. (164 Fed. Rep., 657). Van Dyke *v.* Midnight Sun M. & T. Co. (177 Fed. Rep., 85).

Acts of location; notice; posting; recording: Heman *v.* Griffith (1 Alaska Rep., 264). Moore *v.* Steelsmith (1 Alaska Rep., 121). Price *v.* McIntosh (1 Alaska Rep., 286). Pratt *v.* U. S. Min. Co. (1 Alaska Rep., 95). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). Redden *v.* Harlan (2 Alaska Rep., 402). Beulette *v.* Dodge (2 Alaska Rep., 427). Windmuller *v.* Clarkson (2 Alaska Rep., 298). Charlton *v.* Kelley (2 Alaska Rep., 532). Seliner *v.* McKay (2 Alaska Rep., 564). Overgaard *v.* Westerberg (3 Alaska Rep., 168). Cascaden *v.* Bortolis (3 Alaska Rep., 200). Pearce *v.* Sutherland (3 Alaska Rep., 303). Cook *v.* Klonos (164 Fed. Rep., 529; 90 C. C. A., 403). Sturtevant *v.* Vogel (167 Fed. Rep., 448; 93 C. C. A., 84). Vogel *v.* Warsing (146 Fed. Rep., 949). Zimmerman *v.* Funchion (161 Fed. Rep., 859). Leedy *v.* Lehfeldt (162 Fed. Rep., 304). Hanson *v.* Craig (170 Fed. Rep., 62). Waskey *v.* Hammer (170 Fed. Rep., 31). Stenfeld *v.* Espee (170 Fed. Rep., 825). Fuller *v.* Harris (29 Fed. Rep., 814; 1 Alaska Rep., 779). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 779).

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McKinley Ck. Min. Co. *v.* Alaska United Min. Co. (1 Alaska Rep., 780). McIntosh *v.* Price (121 Fed. Rep., 716; 58 C. C. A., 136; 2 Alaska Rep., 708). Walton *v.* Wild Goose M. & T. Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 709).

Discovery: Russell *v.* Dufresne (1 Alaska Rep., 486). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 777). Moore *v.* Steelsmith (1 Alaska Rep., 121). Barnette *v.* Freeman (2 Alaska Rep., 286). Thompson *v.* Burk (2 Alaska Rep., 249). Redden *v.* Harlan (2 Alaska Rep., 402). Charlton *v.* Kelly (2 Alaska Rep., 532). Overgaard *v.* Westerberg (3 Alaska Rep., 168). Cascaden *v.* Bortolis (3 Alaska Rep., 200). Pearce *v.* Sutherland (3 Alaska Rep., 303). Debney *v.* Iles (3 Alaska Rep., 438). Cook *v.* Johnson (3 Alaska Rep., 506). Cook *v.* Klonos (164 Fed. Rep., 529; 90 C. C. A., 403). Bigelow *v.* Conradt (159 Fed. Rep., 868; 87 C. C. A., 48). Johanson *v.* White (160 Fed. Rep., 901; 88 C. C. A., 83). Cascaden *v.* Bortolis (146 Fed. Rep., 739). Steele *v.* Tanana Min. Ry. Co. (148 Fed. Rep., 678). Lange *v.* Robinson (148 Fed. Rep., 799). Charlton *v.* Kelly (156 Fed. Rep., 433). Cascaden *v.* Bortolis 162 Fed. Rep., 267). Waskey *v.* Hammer (170 Fed. Rep., 31). Hanson *v.* Craig (170 Fed. Rep., 62).

Marking boundaries: Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 777). Butler *v.* Good Enough Min. Co. (1 Alaska Rep., 246). Price *v.* McIntosh (1 Alaska Rep., 286). Steen *v.* Wild Goose M. & T. Co. (1 Alaska Rep., 255). Loeser *v.* Gardiner (1 Alaska Rep., 641). McIntosh *v.* Price (121 Fed. Rep., 716; 58 C. C. A., 136; 2 Alaska Rep., 708). Charlton *v.* Kelly (2 Alaska Rep., 532). Vogel *v.* Warsing (146 Fed. Rep., 949). Smith *v.* Cascaden (148 Fed. Rep., 792). Charlton *v.* Kelly (156 Fed. Rep., 433; 84 C. C. A., 295). Stenfield *v.* Espee (170 Fed. Rep., 825).

Abandonment: Carroll *v.* Price (81 Fed. Rep., 137; 1 Alaska Rep., 806). Haines Wharf Co. *v.* Dalton (1 Alaska Rep., 555). Harkrader *v.* Carroll (76 Fed. Rep., 474; 1 Alaska Rep., 783). McKinley Ck. Min. Co. *v.* Alaska Min. Co. (1 Alaska Rep., 784). Loeser *v.* Gardiner (1 Alaska Rep., 641). Noland *v.* Coon (1 Alaska Rep., 36). Dufresne *v.* Northern Light Min. Co. (2 Alaska Rep., 592). Montagne *v.* Labay (2 Alaska Rep., 575). Lindbloom *v.* Rocks (146 Fed. Rep., 660). White's Guardian *v.* Martin (2 Alaska Rep., 495).

NOTE.—The following sections of the Revised Statutes relating directly or indirectly to mineral lands and mining resources were in effect at the date of the above legislation:

Secs. 2318, 2319, 2320, 2321, 2322, 2323; also sec. 2324, amended by act of February 11, 1875 (18 Stat. L., 315), and by act of June 6, 1874 (18 Stat. L., 61); also sec. 2325, amended by act of January 22, 1880 (21 Stat. L., 61); also sec. 2326, amended by act of March 3, 1881 (21 Stat. L., 505), and by act of April 26, 1882 (22 Stat. L., 49); also sec. 2327, amended by act of April 28, 1904 (33 Stat. L., 445); also secs. 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340.

By the act of May 17, 1884 (23 Stat. L., 26), providing a civil government for Alaska, it is provided that the laws of the United States relating to mining claims and the rights incident thereto, from and after the passage of this act, shall be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, the act being as follows:

Mining laws extended to the District of Alaska.

May 17, 1884.

23 Stat. L., 26.

"The said District of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States."

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Aug. 1, 1912.
37 Stat. L., 242.

Location, placer-mining claim.

SEC. 129a. That no association placer-mining claim shall hereafter be located in Alaska in excess of forty acres, and on every placer-mining claim hereafter located in Alaska, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, including the year of location, for each and every twenty acres or excess fraction thereof.

Location by attorney must be by power of attorney in writing.
Ibid.

SEC. 129b. That no person shall hereafter locate any placer-mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made. Any person so authorized may locate placer-mining claims for not more than two individuals or one association under such power of attorney, but no such agent or attorney shall be authorized or permitted to locate more than two placer-mining claims for any one principal or association during any calendar month, and no placer-mining claim shall hereafter be located in Alaska except under the limitations of this act.

Only two placer-mining claims in any calendar month.
Ibid.

SEC. 129c. That no person shall hereafter locate, cause or procure to be located, for himself more than two placer-mining claims in any calender month: *Provided*, That one or both of such locations may be included in an association claim.

Patenting of placer-mining claims.
Ibid.

SEC. 129d. That no placer-mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width.

When placer-mining claim void.
Ibid.

SEC. 129e. That any placer-mining claim attempted to be located in violation of this act shall be null and void, and the whole area thereof may be located by any qualified locator as if no such prior attempt had been made.

July 4, 1866.
14 Stat. L., 86.
R. S. 2318.
Mineral lands reserved.

SEC. 130. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Morton *v.* Nebraska, 21 Wall., 660.

May 10, 1872.
17 Stat. L., 91.
R. S., 2319.
May 5, 1876.
19 Stat. L., 52.
Valuable mineral deposits in public lands and the lands to be open to citizens, etc.

SEC. 131. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

U. S. *v.* Gear, 3 How., 120.
Forbes *v.* Gracey, 24 U. S., 762.

May. 10, 1872.
17 Stat. L., 91.
R. S., 2320.
Length of mining claims upon veins or lodes;
—width;
—end lines.

SEC. 132. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the passage of this act, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing after the tenth day of May, eighteen hundred and seventy-two, shall render such limitation necessary. The end lines of each claim shall be parallel to each other.



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May 10, 1872.
17 Stat. L., 94.
May 5, 1876.
19 Stat. L., 52.
R. S., 2321.
Proof of citizenship.

SEC. 133. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

May 10, 1872.
17 Stat. L., 91.
R. S., 2322.
Locators of mining locations where there is no adverse claim, etc., to have what exclusive rights of possession and enjoyment.

SEC. 134. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists at the passage of this act, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with said laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. *Provided*, That their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges; and nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Certain exclusive rights to locators of mining claims.

Limitations.

May 10, 1872.
17 Stat., L., 92.
R. S., 2323.
Owners of tunnels to have what rights of possession of certain veins or lodes.

SEC. 135. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

What to be deemed an abandonment of right by owners of tunnels.

Regulations made by miners.
10 May, 1872, c. 152, s. 5, v. 17, p. 92.
R. S., 2324.

SEC. 136. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in

Amended June 6, 1874. See sec. 153, 18 Stat. L. 61.

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length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Amended Feb. 11, 1875. See sec. 154, 18 Stat. L., 315.

Amended Jan. 22, 1880. See sec. 155, 21 Stat. L., 61.

Patents for mineral lands, how obtained.

SEC. 137. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

10 May, 1872, c. 152, s. 6, v. 17, p. 92.

R. S., 2325.

Amended Jan. 22, 1880. See sec. 156, 21 Stat. L., 61.

Amended June 7, 1910. 36 Stat. L., 459. See sec. 163.

Adverse claim, proceedings on.

SEC. 138. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the

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10 May, 1872, c. 152, s. 7, v. 17, p. 93.

R. S., 2326.

Amended Mar. 3, 1881. See sec. 157, 21 Stat. L., 505.

Amended Apr. 26, 1882. See sec. 158, 22 Stat. L., 49.

Amended Apr. 26, 1882. See sec. 159, 22 Stat. L., 49.

same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

Apr. 28, 1904.

33 Stat. L., 545.

17 Stat. L., 94, amended.

R. S., 2327.

Description of mining vein or lode claims.

Patents to conform to official monuments.

Monuments to govern descriptions.

SEC. 139. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

R. S., 2328.

SEC. 140. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

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Conformity of placer claims to surveys, limit of.
9 July, 1870, c. 235, s. 12, v. 16, p. 217.
R. S., 2329.

SEC. 141. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.
9 July, 1870, c. 235, s. 12, v. 16, p. 217.
R. S., 2330.

SEC. 142. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity of placer claims to surveys, limitation of claims.
10 May, 1872, c. 152, s. 10, v. 17, p. 94.
R. S., 2331.

SEC. 143. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

What evidence of possession, etc., to establish a right to a patent.
9 July, 1870, c. 235, s. 13, v. 16, p. 217.
R. S., 2332.

SEC. 144. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Proceedings for patent for placer claim, etc.
10 May, 1872, c. 152, s. 11, v. 17, p. 94.
R. S., 2333.

SEC. 145. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section one hundred and thirty-two, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

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Surveyor-general to appoint surveyors of mining claims, etc.
10 May, 1872, c. 152, s. 12, v. 17, p. 95.
R. S., 2334.

SEC. 146. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by sueh applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Verification of affidavits, etc.
10 May, 1872, c. 152, s. 13, v. 17, p. 95.
R. S., 2335.

SEC. 147. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins intersect, etc.
10 May, 1872, c. 152, s. 14, v. 17, p. 96.
R. S., 2336.

SEC. 148. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for nonmineral lands and mill sites.
10 May, 1872, c. 152, s. 15, v. 17, p. 96.
R. S., 2337.

SEC. 149. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

What conditions of sale may be made by local legislature.
26 July, 1866, c. 262, s. 5, v. 14, p. 252.
R. S., 2338.

SEC. 150. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

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Vested rights to use of water for mining, etc.; right of way for canals.
26 July, 1866, c. 262, s. 9, v. 14, p. 253.
R. S., 2339.

SEC. 151. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

July 9, 1870.
16 Stat. L., 218.
R. S., 2340.
Patents, preemptions, and homesteads subject to vested and accrued water rights.

SEC. 152. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

June 6, 1874.
18 Stat. L., 61.
Claim located prior to May 10, 1872, first annual expenditure extended to Jan. 1, 1875.
Amendment of R. S., 2324, sec. 136, this volume.

SEC. 153. The provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

Feb. 11, 1875.
18 Stat. L., 315.
Money expended in a tunnel considered as expended on the lode.
Amendment of sec. 136, R. S., 2324.

SEC. 154. Section two thousand three hundred and twenty-four of the Revised Statutes is hereby amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

Jan. 22, 1880.
21 Stat. L., 61.
On unpatented claims period commences on Jan. 1 succeeding date of location.
Amends sec. 136, R. S., 2324.

SEC. 155. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States is hereby amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, eighteen hundred and seventy-two."

NOTE.—See sections 129a–129e supra.

Jan. 22, 1880.
21 Stat. L., 61.
Application for patent may be made by authorized agent.
Amends sec. 137, R. S., 2325.

SEC. 156. Section twenty-three hundred and twenty-five of the Revised Statutes of the United States is hereby amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

Mar. 3, 1881.
21 Stat. L., 505.
In action brought title not established in either party.
Amends sec. 138, R. S., 2326.

SEC. 157. If, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

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Apr. 26, 1882.
22 Stat. L., 49.
Adverse claim may be verified by agent.
Amends sec. 138, R. S., 2326.

SEC. 158. The adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

Apr. 26, 1882.
22 Stat. L., 49.
Affidavit of citizenship; before whom made.

SEC. 159. Applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any State or Territory.

Feb. 24, 1909.
35 Stat. L., 645.
Mineral land surveys.
Refund of unused deposit.
Permanent appropriation for refunding.
Repayments to depositors, etc.

SEC. 160. The Secretary of the Treasury is hereby authorized and directed to pay, out of the moneys heretofore or hereafter covered into the Treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors-general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several cases may be, shall be deemed to be annually and permanently appropriated for that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor-general of the district in which the mineral land surveyed or sought to be surveyed is situated and approved by the Commissioner of the General Land Office.

June 25, 1910.
36 Stat. L., 847.
Temporary withdrawals by President for power sites, irrigation, etc., authorized.

SEC. 161. The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress.

Aug. 24, 1912.
37 Stat. L., 497, amends sec. 2, Act of June 25, 1910.
30 Stat. L., 847.
Mining rights continued.
*Provisos.*
Rights of bona fide oil or gas claimants.
Status of prior claims.
Homestead, etc., entries not affected.

That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: *Provided further*, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was

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made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

Creation of forest reserves restricted. Vol. 34, p. 1271.

The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Report of withdrawals to Congress.

Mar. 2, 1907.

34 Stat. L., 1243.

SEC. 162. During each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number, of the mining claims and where situated; second, the number of days work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

Annual improvements, etc., required on mining claims.

Filing affidavits.

Contents.

Prima facie evidence of performance of work, etc.

Forfeiture.

Officer before whom affidavits may be made.

R. S., sec. 5392, 5393, p. 1045.

Time of filing.

The recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded.

Fee.

June 7, 1910.

36 Stat. L., 459. (Amends secs. 2325 and 2326, secs. 137 and 138 in this volume.)

SEC. 163. In the district of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

Public lands. Time extended for filing adverse mineral claims, etc., in Alaska.

R. S., secs. 2325, 2326, pp. 426, 427.

June 25, 1910.

36 Stat. L., 848.

SEC. 164. Every miner or other laborer who shall labor in or upon any mine or mining ground for another in the Territory of Alaska in digging, thawing, conveying, hoisting, piling, cleaning up, or any other kind of work in producing any mineral-bearing sands, gravels, earth, or rock, gold or gold dust, or other minerals, or shall aid or assist therein by his labor as cook, engineer, fireman, or in cutting and delivering wood used in said work, or in work in any like capacity in producing the dump, shall, where his labor directly aided in such production, have a lien upon the dump or mass of mineral-

Miner's labor lien.

Persons entitled.

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bearing sands, gravels, earth, or rocks, and all gold and gold dust, or other minerals therein, and all gold and gold dust extracted therefrom, for the full amount of wages for all the time which he was so employed as such laborer in producing the said dump, within one year next preceding his ceasing to labor thereon; and to the extent of the labor of the said miner or other laborer actually employed or expended thereon, within one year next prior to ceasing to labor thereon, the said lien shall be prior to and preferred over any deed, mortgage, bill of sale, attachment, conveyance, or other claim, whether the same was made or given prior to such labor or not: *Provided*, That this preference shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this act.

Preference of lien.

*Proviso.*
Prior valid deeds, etc., not affected.

June 25, 1910.

36 Stat. L., 848–849.

Notice to be filed.

SEC. 165. Every laborer, within ninety days after the completion of the performance of the work or labor mentioned in the foregoing section who shall claim the benefit thereof, must, personally or by some other person for him, file for record in the recording precinct where the labor was performed a claim of lien containing a statement of his demand under oath, substantially in the following form:

Form.

NOTICE OF LABORER'S LIEN.

Territory of Alaska, ——— precinct, ss:

——— ———, claimant, against ——— ———, defendant.

Notice is hereby given that ——— ———, claimant, claims a lien upon (describing the dump or mass of mineral-bearing sands, gravels, earth, or rock, and its location with reasonable certainty) in the ——— precinct, in the Territory of Alaska, for labor performed in (digging, and so forth; describe the work). That the name of the owner or reputed owner of the said property is ——— ———, and that ——— ——— is the owner or reputed owner of the mine or mining ground from which the dump or mass of mineral-bearing sands, gravels, earth, or rock and the minerals therein were extracted, and that ——— ——— employed claimant to perform such work and labor upon the following terms and conditions (state substance of contract, if any, or reasonable value); that said contract has been faithfully performed and fully complied with on the part of the claimant, who performed labor thereunder aforesaid for the period of ——— days; that said labor was performed between the ——— day of ——— and the ——— day of ———, and the rendition of said service was closed on the ——— day of ———, and ninety days have not elapsed since that time; that the amount of claimant's demand for said service is ———; that no part thereof has been paid (except the sum of ——— dollars), and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ——— dollars, in which amount he claims a lien upon said property.

——— ———,
Claimant.

Territory of Alaska, ——— precinct, ss:

——— ———, being first duly sworn, on oath deposes and says, that I am the claimant (or if by some other person state the fact) named in the foregoing claim; that I have heard the same read, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this ——— day of ———.

——— ———.
[Officer's title.]

June 25, 1910.

36 Stat. L., 849.

Recording, etc.

SEC. 166. The recorder must record every claim filed under the provisions of this act in books kept by him for that purpose, which record must be indexed as deeds and other conveyances are required

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by law to be indexed, and for which he may receive the following fees and none other: For filing, ten cents; for recording, one dollar; for indexing, fifteen cents for each name.

June 25, 1910.
36 Stat. L., 849.
Time to bring actions.

SEC. 167. No lien provided for in this act shall bind any property for a longer period than ninety days after the claim has been filed, unless an action be commenced within that time to enforce the same.

June 25, 1910.
36 Stat. L., 849.
Jurisdiction.

SEC. 168. The action for the foreclosure of the lien provided for in this act shall be begun either in the district court or in the justice's court in the precinct where the lien was filed and the justices of the peace in Alaska are hereby given full jurisdiction in the foreclosure of such liens under the provisions of this act, and shall also have such other jurisdiction and power as is now conferred on them by law in aid of the enforcement of this act, and the provisions of section fifteen hundred and fifty-five of chapter seventy-one of the Code of Civil Procedure now in force in Alaska shall be applicable to the jurisdiction intended to be conferred by this act.

Vol. 31, p. 446.

June 25, 1910.
36 Stat. L., 849.
Amendments allowed before action.

SEC. 169. No mistake, informality, or mere matter of form or lack of statement, either in the lien notice or pleadings, shall be ground for dismissal or unnecessary delay in the action to foreclose the lien, but the lien notice and pleadings may be amended at any time before judgment, and section nine hundred and twenty-four of chapter eleven of the Code of Civil Procedure now in force in Alaska shall apply to such amendments: *Provided*, That if it be shown that a material statement or averment has been omitted or misstated, it shall be ground for a reasonable delay or continuance to give the defendant a reasonable opportunity to meet it upon amendment.

Vol. 31, p. 346.

*Proviso.*
Reasonable delay permitted.

June 25, 1910.
36 Stat. L., 850.
Procedure.

SEC. 170. The claimant may file the original or a certified copy of the notice of lien in the district or justice's court as the statement of his case, and thereupon the court or justice shall issue the usual summons directed to the defendant or defendants, which summons, together with a copy of the lien notice, shall, by any officer authorized to serve process, be served upon the defendant or defendants, as provided in sections seventeen hundred and eighty-two and seventeen hundred and eighty-three of chapter ninety-two of the Code of Civil Procedure now in force in Alaska. The summons shall require the defendant or defendants to appear before such court or justice at a time and a place to be named therein, not less than six nor more than twenty days from the date thereof, to answer the demand of the claimant in the said lien notice, or judgment for want of an answer will be taken against them. Service by publication may be had pursuant to sections eight hundred and seventy-nine and eight hundred and eighty of chapter four of said Code of Civil Procedure. The officer serving the summons shall also immediately post a copy of said lien notice in a conspicuous place on the dump or mass of mineral-bearing sands, gravels, earth, or rock, and gold and gold dust, and other minerals therein upon which the lien is filed, and from the moment of posting the lien notice the dump or mass of mineral-bearing sands, gravels, earth, and rock, and gold and gold dust, and other minerals therein shall be in the custody and under the control of the officer. All persons who claim any interest therein in opposition to the lien claimant may come in and answer and set up and defend their said claims, but no claim or claims of any owner, lessee, or other adverse defendant shall bar the lien claimant from recovering the sum due him for actual labor in producing the said dump or mass of mineral-bearing sands, gravels, earth, or rock, or gold and gold dust, or other minerals.

Service of process.

Vol. 31, pp. 481, 482.

Appearance, etc.

Vol. 31, pp. 339, 340.

Posting notice on dump.

Rights of adverse claimants.

Lien not affected.

June 25, 1910.
36 Stat. L., 850.
Joining of parties, etc.
Court allowances.

SEC. 171. Any number of persons claiming liens under this act may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow, as a part of the costs, the moneys paid for filing, recording, and indexing the notice of lien, the sum of five dollars for drawing the same,

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and a reasonable attorney's fee for each person claiming a lien, not to exceed ten per centum of the amount of the lien established on judgment. Any contract or agreement or any waiver of any kind made or signed by any miner or laborer whereby it is sought to waive or abandon his right to file a lien under this act, or any agreement for an extended time of payment whereby the same end is sought, shall to that extent be null and void as against public policy.

Waiver of right to lien void.

June 25, 1910.

36 Stat. L., 850–851.

Execution of judgment.

Sales.

Extracting minerals.

By marshal.

By defendant, etc.

Disposal of proceeds.

Proviso.

Restriction.

SEC. 172. In such action judgment must be rendered in favor of each person having a laborer's lien for the amount due him, and the court shall order the dump or mass of mineral-bearing sands, gravels, earth, or rock, and the gold and gold dust, and other minerals therein subject to the lien to be sold by the marshal in the same manner that personal property is sold on execution; or the court may, upon a showing that it is necessary to do so to preserve the property from loss or waste, by order require the marshal to wash up or extract the gold and gold dust or other mineral from the said mineral-bearing sands, gravels, earth, or rock; or the court may, by order, allow the defendant or defendants or any party interested to wash up and extract the said mineral, in the presence of the marshal or deputy marshal or special officer, who shall take the gold or gold dust or other minerals as it is washed up and extracted and return the same into court, and it shall be immediately paid out as follows: First, the cost of cleaning up or extracting the gold or gold dust or other minerals shall be paid; second, the court costs shall be paid; and, third, the judgment or judgments so rendered in favor of the lien claimants shall be paid; and if there is not sufficient gold or gold dust, or other minerals, or sufficient moneys obtained from the sale of the property to pay all claims in full, the court shall apportion the proceeds to the payment of such judgments pro rata: *Provided*, That no part of any such proceeds shall be paid upon any claim or judgment to any person who did not actually perform labor in producing the dump or the proceeds thereof until all such preferred claims are paid in full.

June 25, 1910.

36 Stat. L., 851.

Appeals to district court.

Vol. 31, p. 487.

Extracting minerals.

Payment into registry of court.

Proviso.

Release of excess of judgment, etc.

Cash deposit permitted.

SEC. 173. An appeal may be taken from a final judgment of a justice of the peace in actions instituted under this act to the district court, in the manner provided in chapter ninety-seven of the Code of Civil Procedure now in force in Alaska, and upon such appeal being perfected the dump or mass of mineral-bearing sands, gravels, earth and rock, gold and gold dust, or other minerals shall be washed up by the marshal or any party mentioned in section one hundred and seventy-two of this act as the district court may direct, and all the gold or gold dust or other mineral so washed up shall be paid into the registry of the district court, there to await the final judgment on appeal: *Provided*, That the gold or gold dust or other mineral in excess of the amount of the judgment, including an additional amount equal to the probable accruing costs on appeal and two years' interest at the legal rate, shall, after the expiration of ninety days from the time it was paid into the registry of the district court, be released to the owners upon a showing that no liens have been filed against it. The defendant or defendants, or any one or more of them, may deposit cash in lieu of the gold or gold dust on the dump, which shall remain in the custody of the law until the final judgment, and shall then be applied in payment of the judgment or judgments rendered on each lien claims, and costs, and interest.

June 25, 1910.

36 Stat. L., 851.

Liability for buying minerals, etc., posted.

SEC. 174. Any person or persons who shall, after the copy of the notice of lien is posted upon any dump or mass of mineral-bearing sands, gravels, earth or rock, gold and gold dust, or other mineral, as provided in this act, and with knowledge of such notice of lien, buy, purchase, wash up, remove, destroy, or carry away all or any part or portion of the same, or the gold or gold dust therein, or who shall render it difficult, uncertain, or impossible to identify the gold or gold dust or other mineral obtained therefrom, shall be liable to the

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lien holder for the full amount of his judgment and costs; and any person who shall take and carry away all or any part or portion of said dump of mineral-bearing sands, gravels, earth or rock, or the gold or gold dust or other minerals therefrom, after the same shall come into the custody of the officer, shall be guilty of a crime and shall be punished as for the larceny of a like amount; and any district attorney in Alaska is specially required to immediately cause a warrant to be issued for the arrest of any such person or persons and to prosecute them according to law.

Carrying away, etc., deemed larceny.

Prosecutions.

SEC. 175. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

June 6, 1900.
31 Stat. L., 321, 326, 330.

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

What recorded.

* * * * * * *

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: *Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

*Proviso.* Mining claims.

Where instruments recorded.

* * * * * * *

* * * *Provided*, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act.

*Proviso.* Miners' regulations for recording, etc.—recorder.

Records at Dyea, etc., legalized.

Charlton Code, pp. 71, 72.

SEC. 176. Native-born citizens of the Dominion of Canada shall be accorded in said District of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said District of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.

May 14, 1898.
30 Stat. L., 415.

Citizens of Canada, mining rights, etc., of.

Charlton Code, p. 61, sec. 13.

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Mar. 3, 1891.

26 Stat. L., 1095. Town sites on mineral lands authorized. Lands entered under the mineral laws not included in restriction to 320 acres.

SEC. 177. Town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant; and that the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral-land laws.

Maximum land entries not to include mining claims.

Charlton Code, pp. 37, 38, secs. 16, 17.

June 4, 1897.

30 Stat. L., 34, 35.

SEC. 178. All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Forest reservations, when to be established.

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

June 4, 1897.

30 Stat. L., 35. Use of timber, etc., by settlers, etc.

SEC. 179. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

June 4, 1897.

30 Stat. L., 36. Egress and ingress of settlers within reservations, etc.

SEC. 180. Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reserva-

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tions for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

June 4, 1897.
30 Stat. L., 36.
Restoration of mineral or agricultural lands to the public domain.

SEC. 181. Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

Feb. 11, 1897.
29 Stat. L., 526.
Entry and patenting of lands containing petroleum and other mineral oils under the placer-mining laws.

SEC. 182. Any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer-mineral claims: *Provided*, That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

Feb. 12, 1903.
32 Stat. L., 825.
Assessment required for oil mining claims.

SEC. 183. Where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer-mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

Mar. 2, 1911.
36 Stat. L., 1015.
Public lands.
Locators of mineral oil lands.
Patents not to be denied, solely for transfer before discovery, etc.
*Proviso.*
Condition.

SEC. 184. In no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases: *Provided, however*, That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.

Jan. 31, 1901.
31 Stat. L., 745.
Mining laws extended to saline lands.

SEC. 185. All unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: *Provided*, That the same person shall not locate or enter more than one claim hereunder.

Aug. 4, 1892.
27 Stat. L., 348.
Entry of lands chiefly valuable for building stone under the placer-mining laws.

SEC. 186. Any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral claims: *Provided*, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

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# CHAPTER ELEVEN.

## COAL LANDS.

(For rules and regulations apply to Commissioner of Land Office.)

Sec.
187. Coal-land law extended to Alaska; coal-land entries, boundaries, filing notice, etc.
188. Applications to be made within three years; provisions for patents; price per acre; notice to be published; notices to be posted on claim; shores of any navigable waters reserved.
189. Adverse claims, proceedings thereon.
190. United States coal-land laws not in conflict to remain in force.
NOTE.—Act of June 6, 1900, amended by the foregoing act, is printed in full in note under this section.
191. Entry of coal lands under R. S., 2347.
192. Preemption of coal lands under R. S., 2348.
193. Preemption claims to be presented within 60 days, etc., under R. S., 2349.
194. Only one entry allowed under R. S., 2350.
195. Conflicting claims; proceedings under R. S., 2351.
Sec.
196. Rights reserved to sell lands valuable for gold, silver, and copper, under R. S., 2352.
197. Consolidation of claims permitted under act May 28, 1908.
198. Preference right to purchase product for Army and Navy reserved; price fixed by the President; appeal to the Court of Claims.
199. Unlawful trust combinations forbidden; forfeiture of lands provided.
200. Provision for terms and conditions in patents.
201. Confirmation of entries on lands erroneously deemed nonmineral; preservation of coal rights; disposal under coal-land laws; right of owner to surface; domestic use of coal.
202. Protection of lives of miners in Territories; ventilation, etc.
203. Provision for mine inspectors in Alaska; compensation, investigation of mine explosions; testing fuel; report of investigation.

Apr. 28, 1904.
33 Stat. L., 525.
Coal-land entries.
Location of developed mineral lands.
Act of June 6, 1900, amended (31 Stat. L., 658).
Boundaries.
Filing notice.

SEC. 187. Any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the District of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

Charlton Code, p. 104, sec. 1.

Patents.
Ibid.
Applications to be made within three years.
Price per acre.
Notice to be published.

SEC. 188. Such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor-general for the District of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description

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of the lands, to have been published in a newspaper in the District of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat or survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: *Provided*, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

Notices to be posted on claim.

*Proviso.* Shores of navigable waters.

Charlton Code, p. 104, sec. 2.

SEC. 189. During such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

Adverse claims.

Ibid.

Proceedings.

Charlton Code, p. 104, sec. 3.

SEC. 190. All the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the District of Alaska.

Continuance of existing laws.

Ibid.

Charleton Code, p. 104, sec. 4.

NOTE.—The act of June 6, 1900 (31 Stat. L., 658), to extend the coal-land laws to the District of Alaska, which the foregoing sections amend, reads as follows:

"That so much of the public-land laws of the United States are hereby extended to the District of Alaska as relate to coal lands, namely, sections 2347 to 2352, inclusive, of the Revised Statutes."

SEC. 191. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

R. S., 2347. Entry of coal lands. Mar. 3, 1873, c. 270, sec. 1017, p. 607.

SEC. 192. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvement.

R. S., 2348. Preemption of coal lands. Ibid., s. 2.



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R. S., 2349.

Preemption claims of coal land to be presented within sixty days, etc. Ibid., s. 3.

SEC. 193. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

R. S., 2350.

Only one entry allowed. Ibid., s. 4.

SEC. 194. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

R. S., 2351.

Conflicting claim. Ibid., s. 5.

SEC. 195. In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

R. S., 2352.

Rights reserved. Ibid., s. 6.

SEC. 196. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

May 28, 1908.

35 Stat. L., 424.

Development of coal deposits in.

Consolidation of claims, etc., permitted.

Limit of acreage.

SEC. 197. All persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest, prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs or assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: *Provided*, That no corporation shall be permitted to consolidate its claims under this act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska.

*Proviso.*

Restriction.

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Preference right to purchase product for Army and Navy reserved.

Ibid.

Price fixed by the President.

Litigation.

SEC. 198. The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

Unlawful trust, etc., forbidden.

Ibid.

Forfeiture.

SEC. 199. If any of the lands or deposits purchased under the provisions of this act shall be owned, leased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in anywise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of two thousand five hundred and sixty acres in the district of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney-General of the United States in the courts for that purpose.

Patents.

Ibid.

Mar. 3, 1909.

35 Stat. L., 844.

SEC. 200. Every patent issued under this act shall expressly recite the terms and conditions prescribed in sections one hundred and ninety-eight and one hundred and ninety-nine hereof.

Confirmation of entries on lands erroneously deemed nonmineral.

Preservation of coal rights to United States.

Disposal under coal-land laws.

Right of owner of surface.

*Provisos.*

Domestic use of coal.

Rights of entryman.

SEC. 201. Any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: *Provided*, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: *Provided further*, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

For withdrawal by President of Public Lands see sec. 161, supra.

July 1, 1902.

32 Stat. L., 631–632.

Miners in Territories.

Protection of lives of.

Vol. 26, p. 1105.

Ventilation to be provided.

Coal dust.

SEC. 202. That the owners or managers of every coal mine shall provide an adequate amount of ventilation of not less than eighty-three and one-third cubic feet of pure air per second, or five thousand cubic feet per minute for every fifty men at work in said mine, and in like proportion for a greater number, which air shall by proper appliances or machinery be forced through such mine to the face of each and every working place, so as to dilute and render harmless and expel therefrom the noxious or poisonous gases. Wherever it is practicable

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to do so the entries, rooms, and all openings being operated in coal mines shall be kept well dampened with water to cause the coal dust to settle, and that when water is not obtainable at reasonable cost for this purpose accumulations of dust shall be taken out of the mine, and shall not be deposited in way places in the mine where it would be again distributed in the atmosphere by the ventilating currents: *Provided*, That all owners, lessees, operators of, or any other person having the control or management of any coal shaft, drift slope, or pit in the Indian Territory, employing twenty or more miners to work in the same, shall employ shot firers to fire the shots therein. Said shots shall not be fired to exceed one per day; at twelve o'clock noon in cases where the miners work but half a day; and at five o'clock in the evening when the mine is working three-quarters or full time, and they shall not be fired until after all miners and other employees working in said shafts, drifts, slopes, or pits shall be out of same. The violation of this act shall constitute a misdemeanor and any person convicted of such violation shall pay a fine of not exceeding five hundred dollars.

*Proviso.*

Employment of shot firers in Indian Territory.

Time of firing shots.

Penalty for violation.

June 25, 1910.

36 Stat. L., 742.

Investigation of mine explosions.

SEC. 203. For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents and other inquiries and technologic investigations pertinent to the mining industry, three hundred and ten thousand dollars;

Testing fuels.

For the analyzing and testing of the coals, lignites, ores, and other mineral fuel substances belonging to or for the use of the United States, heretofore under the supervision of the United States Geological Survey, one hundred thousand dollars;

Reports of investigation.

*Post*, p. 883.

*Proviso.*

Printing restriction.

For making public reports of the work, investigations and information obtained by said Bureau of Mines, with the recommendations of such bureau, five thousand dollars: *Provided*, That no part of this sum shall be expended for printing except at the Government Printing Office;

Mine inspectors.

Vol. 26, p. 1104.

For salaries of two mine inspectors, authorized by the act approved March third, eighteen hundred and ninety-one, for the protection of the lives of miners in the Territories, at two thousand dollars per annum each, four thousand dollars; and said inspectors are hereby authorized to inspect coal and other mines in the District of Alaska, to which District the provisions of said act are hereby extended and made applicable;

Per diem, etc.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding three dollars per day each while absent from their homes on duty, except in Alaska, when such allowance shall be at the rate of five dollars per day, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, four thousand five hundred dollars.

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## CHAPTER TWELVE.

### GENERAL PROVISIONS.

(Land districts, surveys, special grants.)


Sec.
204. Land districts; receiver and register; salaries.
205. Alaska to be one land district.
206. Nome and Fairbanks districts created.
207. Registers and receivers; clerks of court and marshals to act.
208. Noncompliance with law caused by vacancy in office of register or receiver not to affect, etc.


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Sec.
209. Fees, surplus; no other salary.
210. Fees and commissions of register and receiver.
211. Surveys; approval.
212. In effect July 1, 1907.
NOTE.—For history of prior acts, see note under this section.
213. System of public-land surveys extended to Alaska.
214. Appointment of surveyor general; salary.
215. Division of Territory into two land districts; additional officers.
NOTE.—Provision for registers and receivers; compensation of, etc.
216. Right of entry under all the land laws restricted to 320 acres; reservation in patents for right of way of ditches and canals constructed.
Sec.
217. Reservoir sites restricted.
218. Annette Islands reserved for Met-la-kah-tla Indians.
219. Juneau granted land for public school.
220. Provision for Cordova Bay Harbor Improvement & Town Site Co. to purchase land at the head of Cordova Bay.
221. Provision that Karluk Packing Co. may purchase certain land in Alaska.
221½. Secretary of Treasury may lease unproductive public property.

May 14, 1898.
30 Stat. L., 414.
Land districts.

SEC. 204. That the President is authorized and empowered, in his discretion, by Executive order from time to time to establish or discontinue land districts in the District of Alaska, and to define, modify, or change the boundaries thereof, and designate or change the location of any land office therein; and he is also authorized and empowered to appoint, by and with the advice and consent of the Senate, a register for each land district he may establish and a receiver of public moneys therefor; and the register and receiver appointed for such district shall, during their respective terms of office, reside at the place designated for the land office. That the registers and receivers of public moneys in the land districts of Alaska shall each receive an annual salary of one thousand five hundred dollars and the fees provided by law for like officers in the State of Oregon, not to exceed, including such salary and fees, a total annual compensation of three thousand dollars for each of said officers.

Receiver and register.

Salaries.

NOTE.—As to compulsory attendance of witnesses before registers and receivers, see act of January 31, 1903 (32 Stat. L., p. 790).

Feb. 14, 1902.
32 Stat. L., 20.
Alaska.
To be one land district.

SEC. 205. On and after June first, nineteen hundred and two, the number of land offices and land districts in the District of Alaska is hereby reduced to one, the location of which shall be fixed by the President.

Charlton Code, p. 80.

Mar. 2, 1907.
34 Stat. L., 1232.
Public lands.
Nome and Fairbanks districts, Alaska, created.
Vol. 30, p. 414.

SEC. 206. There are hereby created two additional land districts, the boundaries of which shall be designated by the President, in the District of Alaska, to be known as the Nome land district and the Fairbanks land district, with the land offices located, respectively, at Nome, Alaska, and Fairbanks, Alaska.

Registers and receivers.

Clerks of court and marshals to act.

Ibid.

SEC. 207. The clerks of the district courts at Nome and Fairbanks shall, respectively be ex officio registers of the land offices at Nome and Fairbanks and the marshals of the said courts at Nome and Fairbanks shall be ex officio receivers of public moneys for the Nome and Fairbanks land districts. Said officers shall perform the several duties of register of the land office and receiver of public moneys for the land districts with all the powers incident to such offices to the same extent as now performed by the register of the land office and the receiver of public moneys at Juneau, Alaska.

R. S., 2270.
Noncompliance with laws caused by vacancy in office of register or receiver not to affect, etc.
Mar. 3, 1843, ch. 86, sec. 6, vol. 5, p. 620.

SEC. 208. Whenever the vacancy of the office either of register or receiver, or of both, renders it impossible for the claimant to comply with any requisition of the preemption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim; but such requisition must be complied with within the same

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period after the disability is removed as would have been allowed had such disability not existed.

Mar. 2, 1907.
34 Stat. L., 1232.
Fees, etc.

SEC. 209. The said officers shall, in addition to their present compensation as clerk or marshal as provided by law, receive all the fees and commissions allowed by law for their services as registers of land offices and receivers of public moneys for land districts under the land laws: *Provided*, That any fees or commissions in excess of one thousand five hundred dollars per annum received by either such officials shall be paid into the Treasury of the United States: *Provided*, That no other salary than aforesaid shall be paid such registers and receivers.

*Provisos.*
Surplus.
No other salary.

R. S., sec. 2238, p. 392.
Fees and commissions of register and receiver. Sept. 4, 1841, ch. 16, sec. 12, vol. 5, p. 456. Mar. 21, 1864, ch. 38, sec. 4, vol. 13, p. 35.

SEC. 210. Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

First. A fee of one dollar for each declaratory statement filed and for services in acting on preemption claims.

Apr. 20, 1818, ch. 123, vol 3, p. 466.

Second. A commission of one per centum on all moneys received at each receiver's office.

May 20, 1862, ch. 75, sec. 6, vol. 12, p. 393.
Mar. 21, 1864, ch. 38, sec. 2, vol. 13, p. 35.
July 15, 1870, ch. 294, sec. 25, vol. 16, p. 320.
Mar. 3, 1873, ch. 277, sec. 6, vol. 17, p. 606.

Third. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the certificate therefore issued as the basis of a patent.

Fourth. The same commission on lands entered under any law to encourage the growth of timber on western prairies, as allowed when the like quantity of land is entered with money.

Mar. 22, 1852, ch. 19, sec. 2, vol. 10, p. 4.
July 2, 1862, ch. 130, sec. 7, vol. 12, p. 505.

Fifth. For locating military bounty-land warrants, issued since the eleventh day of February, eighteen hundred and forty-seven, and for locating agricultural college land scrip, the same commission, to be paid by the holder or assignee of each warrant or scrip, as is allowed for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

May 30, 1862, ch. 86, sec. 6, vol. 12, p. 409.
Amended Dec. 17, 1880, 21 Stat. L., 311.

Sixth. A fee, in donation cases, of two dollars and fifty cents for each final certificate for one hundred and sixty acres of land, five dollars for three hundred and twenty acres, and seven dollars and fifty cents for six hundred and forty acres.

July 1, 1864, ch. 196, sec. 1, vol. 13, p. 335.
Mar. 13, 1874, ch. 55, vol. 18, p. 21.
May 5, 1876, ch. 91, vol. 19, p. 52.

Seventh. In the location of lands by States and corporations under grants from Congress for railroads and other purposes (except for agricultural colleges), a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location.

Apr. 24, 1820, ch. 51, sec. 5, vol. 3, p. 567.

Eighth. A fee of five dollars per diem for superintending public land sales at their respective offices; and, to each receiver, mileage in going to and returning from depositing the public moneys received by him.

May 10, 1872, ch. 152, sec. 12, vol. 17, p. 95.

Ninth. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

Mar. 21, 1864, ch. 38, sec. 4, vol. 13, p. 35.

Tenth. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants in establishing preemption and homestead rights.

May 10, 1872, ch. 152, sec. 12, vol. 17, p. 95.

Eleventh. A like fee as provided in the preceding subdivision when such writing is done in the land office in establishing claims for mineral lands.

Mar. 21, 1864, ch. 38, sec. 6, vol. 13, p. 36, and several acts establishing land offices for Utah, Wyoming, and Montana.

Twelfth. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section.

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Mar. 2, 1907.
34 Stat. L., 1232.
Surveys.

SEC. 211. The surveyor general of the District of Alaska, under the direction of the Secretary of the Interior, shall furnish the receivers of said land offices a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in said Nome and Fairbanks land districts to meet the requirements thereof, and upon application by any person desiring to have an official survey made the receivers shall furnish a number or numbers for such survey or surveys, together with an order directing a qualified deputy surveyor to make the same, and such application, order, and the fee required to be paid to the surveyor general in the District of Alaska shall be transmitted to the surveyor general: *Provided*, That all surveys thus made shall be approved by the surveyor general as at present.

*Proviso.*
Approval.

In effect July 1, 1907.
Ibid.

SEC. 212. This act shall take effect and be in force from and after July first, nineteen hundred and seven.

NOTE.—(1) At the date of this compilation there seems to be three land districts, known as the Juneau Land District, Nome Land District, and Fairbanks Land District, with land offices located at Juneau, Nome, and Fairbanks, respectively.

(2) Prior acts providing for land districts are as follows:

By the act of May 17, 1884 (23 Stat. L., 24, 1st Supp., R. S., 430, sec. 8), it was provided that Alaska is created a land district, and the United States Land Office located at Sitka; and the commissioner provided for by this act, to reside at Sitka, shall be ex officio register of the land office; the clerk, ex officio receiver of public moneys; and the marshal, ex officio surveyor general of said district, etc.

By act of July 24, 1897 (30 Stat. L., 215, sec. 4), the President is authorized and empowered, in his discretion, to divide the Territory into two land districts.

By act of May 14, 1898 (30 Stat. L., 414, sec. 8), the President is authorized to establish or discontinue land districts in Alaska.

By act of February 14, 1902 (32 Stat. L., 20), it is provided that on and after June 1, 1902, the number of land offices and land districts in the district is hereby reduced to one, the location of which shall be fixed by the President.

By act of June 13, 1902 (32 Stat. L., 385), the district is divided into three recording and judicial districts.

By the foregoing act of March 2, 1907 (34 Stat. L., 1232), two additional land districts are created.

By act of March 3, 1909 (35 Stat. L., 839), the district is divided into four recording and judicial districts.

Mar. 3, 1899.
30 Stat. L., 1098.

SEC. 213. The system of public land surveys is hereby extended to the District of Alaska.

Charlton Code, p. 63.

System of public-land surveys extended to Alaska.

NOTE.—Provisions for surveys of public lands are found in the Revised Statutes, sections 2395 to 2413, inclusive; 1876, July 31, Chap. 46, par. 7, 1st Supp., R. S. 115; 1894, August 15, Chap. 288, 2d Supp., R. S., 244; 1894, August 18, chap. 301, par. 11, 2d Supp., R. S. 254; 1895, March 2, chap. 189, par. 9, 2d Supp., R. S. 430.

July 24, 1897.
30 Stat. L., 215.
Sec. 8, vol. 23, p. 26, amended.

SEC. 214. That section eight of an act entitled "An act providing a civil government for Alaska" be, and the same is hereby, amended by striking out the words "the commissioner provided for by this act to reside in Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor general of said district."

Appointment of surveyor general.

There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor general for the District of Alaska, embracing one surveying district.

Salary.

The surveyor general of Alaska shall receive a salary at the rate of two thousand dollars per annum.

Charlton Code, p. 51.

NOTE.—See sec. 370 of Title XI of Political Code, act of June 6, 1900, fixing salary at $4,000.

A surveyor-general has been appointed for the District of Alaska, and is provided with an office and office force at Juneau, and has a large number of deputies under him.

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Division of Territory into two land districts.

Additional officers.

Ibid.

SEC. 215. The President is authorized and empowered, in his discretion, to divide said Territory into two land districts and to designate the boundaries thereof, and he is also authorized and empowered to appoint, by and with the advice and consent of the Senate, a register of said additional land office and receiver of public moneys therefor, and in case of the creation of such additional land district the surveyor general shall serve in both districts.

Charlton Code, p. 51.

NOTE.—See sec. 205, act of Feb. 14, 1902, reducing land districts to one.

By act of May 14, 1898 (30 Stat. L., 409, 2d Supp., R. S., 755), the President is authorized and empowered to appoint a register and a receiver of public moneys for each land office.

By act of July 1, 1898 (30 Stat. L., 618), the salaries and commissions allowed are fixed as follows:

For register and receiver at Sitka, not less than $1,500, and with fees and commission not more than $3,000 a year, and the same compensation is allowed for additional registers and receivers that may be appointed. By the foregoing act creating Nome and Fairbanks land districts, the clerks of the district court are made ex officio registers of the land office and the marshals of the courts ex officio receivers of public moneys, and in addition to their compensation as clerks and marshals, respectively, they are permitted to retain $1,500 per annum of fees or commissions as registers and receivers, the balance of fees and commissions to be paid into the Treasury.

See sec. 206, March 2, 1907, creating two additional land districts.

Aug. 30, 1890.
26 Stat. L., 391.

Right of entry under all the land laws restricted to 320 acres. (See act Mar. 3, 1891, sec. 17, 26 Stat. L., p. 1101.)

Reservation in patents for right of way for ditches and canals constructed.

SEC. 216. No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. * * *

Mar. 3, 1891.
26 Stat. L., 1101.

Reservoir sites restricted.

SEC. 217. Reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs.

Charlton Code, p. 37, sec. 17.

Mar. 3, 1891.
26 Stat. L., 1101.

Annette Islands reserved for Metlakahtla Indians.

SEC. 218. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago, in southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations and subject to such restrictions as may be prescribed from time to time by the Secretary of the Interior.

Charlton Code, p. 37, sec. 15.

Jan. 16, 1903.
32 Stat. L., 773.

Juneau, Alaska.
Granted land for public school.

SEC. 219. That certain real property now situated in the town of Juneau and district of Alaska, upon which the public-school building of the town of Juneau is now situated, and belonging to the United States of America, known as Government reservation numbered two,

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being all of block twenty-three except lots numbered five and six in the town of Juneau, as the same appears of record on the official plat of the town-site trustee, be, and the same is hereby, granted to the incorporated town of Juneau for school purposes, and the Secretary of the Interior is hereby directed to cause a patent to be issued therefor to such municipality upon proof of its incorporation.

Charlton Code, pp. 84, 85.

Feb. 6, 1909.
35 Stat. L., 598.

SEC. 220. A corporation to be hereafter duly organized under the name and style of the Cordova Bay Harbor Improvement and Town-Site Company and composed of the following-named persons, to wit: John H. McGraw, Edward Lewin, and Donald A. McKenzie, or any of them, and such others as may hereafter become associated with them as incorporators, shall be permitted to purchase at the price of two dollars and fifty cents per acre not to exceed two thousand acres of such nonmineral lands of the United States as may be selected by said corporation and approved by the Secretary of the Interior, including tide or mud flats, situated at the head of Cordova Bay, at approximately latitude sixty degrees and thirty minutes north, and longitude one hundred and forty-six west of Greenwich, in the district of Alaska, the same to be located in as nearly compact form as possible with a front of not to exceed two miles on the wharfage and dock area to be reserved by the Secretary of War in order to effect the improvement of said lands for town-site purposes and for the promotion and convenience of commerce with foreign nations and among the several States: *Provided, however*, That the Secretary of the Interior is hereby authorized and directed to withdraw from all forms of location or entry not to exceed three thousand acres to be selected by him and surrounding the land hereby made purchasable, subject to future disposition by the Congress.

Cordova Bay Harbor and Improvement and Town-Site Company may purchase lands at head of.

Price per acre.

Limit.

Location.

Purpose.

*Proviso.*

Land withdrawn from entry, etc.

That no land covered by any valid existing claim or right heretofore initiated or recognized under any law of the United States shall be subject to purchase under this act until all rights thereunder have been transferred to said corporation or relinquished to the United States.

Prior rights protected.

That the Secretary of War, as soon as practicable after the passage of this act, shall establish a wharfage and dock area extending along the entire water front of the land proposed to be bought by said corporation and one thousand feet in width, thereby fixing the seaward line of said wharfage and dock area, and the area thus established is hereby reserved and shall remain under the control of the United States, in trust, however, for the future State which may be created, including the same or any part thereof within its boundaries: *Provided*, That wharves, docks, slips, and waterways may be constructed and maintained within such wharfage and dock area in accordance with plans approved and terms and conditions prescribed from time to time by the Secretary of War, but the public at all times shall have the use of all such wharves, docks, slips, and waterways upon the payment of such reasonable charges, and under such regulations as may from time to time be fixed and prescribed by the Secretary of War.

Land reserved for dock, etc., purposes.

*Proviso.*

Plans.

That the right of eminent domain may, after the issuance of patent hereunder, be exercised over any lands purchased under this act, whether such lands may have been included within streets and alleys or otherwise, under any law applicable to lands held in private ownership in the district of Alaska, and no exclusive right of way shall be granted to any person, company, or corporation over the lands purchased under this act.

Right of eminent domain.

Exclusive right of way prohibited.

That the corporation shall within six months after the approval hereof, file with the register and receiver of the land district within which the lands applied for are situated, an application to purchase

Application, etc., to purchase.

Time limit.

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under this act, which application shall particularly describe the lands applied for and be accompanied with a certified copy of the field notes and plat of the survey of the boundaries of such lands, made under the direction and supervision of the surveyor general of the district of Alaska.

Plan of town site, etc., to be filed.

That the corporation shall within twelve months after the approval of the application, subject to the approval and under the direction of the Secretary of the Interior, file with the said Secretary a detailed plan of a town site, embracing the lands applied for, upon which shall be delineated adequate streets, alleys, lots, blocks, wharves, docks, slips, and waterways, and such reservations as the said Secretary may deem necessary and suitable for public use as parks and sites for public and school buildings and coaling stations: *Provided*,

*Proviso.*

Public park reservations, etc.

That the reservations for public parks shall, in addition to such other lands as may be needed for that purpose, include all of said lands which can not be reasonably utilized as sites for building purposes; and said corporation shall, after patent, dedicate and convey all of the said reservations for such public uses.

Payment of purchase price.

That the corporation, or its assigns, shall within six months from the approval of the plan pay to the proper received the full purchase price of the lands applied for; and within five years after

Preparing reservation for wharfage and town-site purposes.

the issuance of patent said corporation shall do all things necessary to render three hundred and twenty acres of the land purchased suitable and available for wharfage and town-site purposes in accordance with the plan thereof submitted, and shall within two

Construction of dock, pier, etc.

years from the approval of the plan construct within said wharfage and dock area a public dock, wharf, or pier, with suitable approaches on the land side and with not less than thirty-four feet of water at mean low tide leading to and surrounding the same, so as to enable ocean steamers to approach, dock, discharge, and take on cargoes thereat; that patent for said lands shall recite that they are issued under the provisions of this act and are subject to cancellation and

Cancellation of patent.

Forfeiture.

the land therein granted to forfeiture as herein provided; and if said corporation or its assigns shall fail to comply with any of the terms and conditions of this act, either before or after the issuance of patent, all interests, rights, or title which may have accrued or vested under this act shall be forfeited to the United States, and the application under which they accrued, or the patent under which they vested shall be canceled: *Provided*, That the Secretary of the Interior may, on satisfactory showing, reasonably extend the time within which any of the acts enumerated in this act may be performed.

*Proviso.*

Extension of time.

Confining waters of Cordova Creek, etc.

That said corporation shall have the right to confine the waters of Cordova Creek to one channel and to straighten and deepen the same in such manner as may be prescribed by the Secretary of War.

May 21, 1900.

31 Stat. L., 180–181.

Karluk Packing Co. may purchase certain land in Alaska.

SEC. 221. The Karluk Packing Company, claiming under amended survey numbered twenty-four, in the district of Alaska, or its successor in interest, may purchase the land embraced in said survey: *Provided*, That there shall be reserved to the United States for the use of the public as a highway a strip of land sixty feet in width, parallel with and as near as may be practicable to the shore line of Shellikoff Straits; and for the purpose of allowing access by the public to the waters of Shellikoff Straits, a strip of land fifty feet in width across said survey shall also be reserved, to be located, as near as practicable, between corners seventeen and thirty of said survey, extending from Shellikoff Straits to the Karluk River, and not to interfere with any existing improvements; and upon payment of the price of two dollars and fifty cents per acre for said land, and submission of proof that said land embraces improvements of the claimant and is needed in the prosecution of its business. patent shall issue as in other cases under section ten of the act of Congress approved

*Proviso.*

Reservation of highway.

Patent.

Vol. 30, p. 413.

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May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes;" but the limitation in said act, that no entry shall extend along the water front for more than one hundred and sixty rods, shall not be held to apply to such entry of the Karluk Packing Company. Exemption, etc.

Charlton Code, pp. 63, 64.

SEC. 2211/2. Secretary of the Treasury is empowered to lease unproductive public property. Act of March 8, 1879, Revised Statutes, 1 Supplement, chapter 182, paragraph 4, page 251. Mar. 3, 1879. 20 Stat. L., 383.

* * * * * * *

That authority be, and is hereby, given to the Secretary of the Treasury to lease at his discretion for a period not exceeding five years, such unoccupied and unproductive property of the United States under his control, for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress. * * Secretary of Treasury may lease unproductive public property. R. S., sec. 3749.

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# TITLE V.

## FORESTS.

(Department of Agriculture.)

## CHAPTER ONE.

(For rules and regulations apply to the Department of Agriculture.)


Sec.
222. President authorized to set apart and reserve forest lands.
223. Appropriation for investigation of forested lands.
224. Forested lands. Expenses of investigation.
225. Forest reserves; control of transferred to Agricultural Department.
226. Export of pulp wood, etc., from Alaska, permitted.
227. Selection of supervisors and rangers.
228. Water rights granted for mining, etc., purposes.
229. Use of funds received from sale of products, authorized.
230. First specific appropriation for Alaska forests.
231. Second specific appropriation for Alaska forests.
NOTE.—Receipts and expenditures, see table under this section.
232. Proclamation December 24, 1892, Afognak Island reserved.
233. Proclamation August 20, 1902, certain islands reserved, called the Alexander Archipelago forest.
234. Proclamation of July 20, 1907, Alexander Archipelago forest reserve, modified.
235. Proclamation of July 23, 1907, Chugach National Forest reserved.
236. Proclamation of September 10, 1907, Tongass National Forest reserved.
237. Proclamation of September 18, 1907, Chugach National Forest boundaries, modified.
238. Executive order consolidating national forests of Alaska.
239. Proclamation enlarging boundaries of Tongass National Forest, February 16, 1909.
240. Proclamation enlarging boundaries of Chugach National Forest, February 23, 1909.
241. Proclamation of March 23, 1910, reserving site for national monument at Sitka.
242. Executive order, October 28, 1910, reducing the area of the Chugach National Forest.
NOTE.—History of the Chugach National Forest and of the Tongass National Forest.


Mar. 3, 1891.

26 Stat. L., 1103.

President authorized to set apart and reserve forest lands.

SEC. 222. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

Charlton Code, p. 39, sec. 24.



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June 11, 1896.
29 Stat. L., 432.
Appropriation for investigation of forested lands.

SEC. 223. To enable the Secretary of the Interior to meet the expenses of an investigation and report by the National Academy of Sciences on the inauguration of a national forestry policy for the forested lands of the United States, twenty-five thousand dollars.

June 4, 1897.
30 Stat. L., 31.
Forested lands.
Expenses of investigation.

SEC. 224. The Secretary of the Interior is hereby authorized to pay from the appropriation for forested lands of the United States, act of June eleventh, eighteen hundred and ninety-six, such expenses not exceeding one thousand dollars as may have been incurred by members of the Commission from the National Academy of Sciences prior to July first, eighteen hundred and ninety-six.

Feb. 1, 1905.
33 Stat. L., 628.
Forest reserves.
Control of, transferred to Agricultural Department.
Vol. 26, p. 1103.
Vol. 30, p. 36.
Exceptions.

SEC. 225. The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

Charlton Code, p. 115, sec. 1; see sec. 222, ante.

Export of pulp wood, etc., from Alaska permitted.
Ibid.

SEC. 226. That pulp wood or wood pulp manufactured from timber in the district of Alaska may be exported therefrom.

Charlton Code, p. 115, sec. 2.

Selection of supervisors and rangers.
Ibid.

SEC. 227. Forest supervisors and rangers shall be selected, when practicable, from qualified citizens of the States or Territories in which the said reserves, respectively, are situated.

Charlton Code, p. 115, sec. 3.

Water rights granted for mining, etc., purposes.
Ibid.
Regulations.

SEC. 228. Rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

Charlton Code, p. 115, sec. 4.

Use of funds received from sale of products, etc.
Ibid.

SEC. 229. All money received from the sale of any products or the use of any land or resources of said forest reserves shall be covered into the Treasury of the United States and for a period of five years from the passage of this act shall constitute a special fund available, until expended, as the Secretary of Agriculture may direct, for the protection, administration, improvement, and extension of Federal forest reserves.

Charlton Code, p. 115, sec. 5.

May 26, 1910.
36 Stat. L., 426–429.
First specific appropriation for Alaska forests.

SEC. 230. For salaries and field and station expenses necessary for the use, maintenance, and protection of the National Forests, Chugach National Forest of Alaska, $17,848; Tongass National Forest of Alaska, $8,300.

Mar. 4, 1911.
36 Stat. L., 1247–1248–1251.
Second specific appropriation for Alaska forests.

SEC. 231. For salaries and field and station expenses, including the maintenance of nurseries, collecting seed, and planting, necessary for the use, maintenance, and protection of the national forests named below:

Chugach National Forest, $25,280.

Tongass National Forest, $23,041.

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NOTE.—

*Alaska forests.*

| Fiscal year. | Net receipts. | Expenditures. | |
|---|---|---|---|
| | | Administration. | Permanent improvement. |
| 1906 | $2,711.43 | $4,715.22 | ..... |
| 1907 | 3,671.52 | 4,578.73 | ..... |
| 1908 | 10,739.13 | 7,753.40 | ..... |
| 1909 | 11,276.99 | 15,024.33 | $11,300.00 |
| 1910 | 19,125.47 | 22,423.96 | 1,400.00 |
| 1911 | 39,486.40 | 27,471.75 | 750.00 |
| Total | 87,010.94 | 81,967.39 | 13,450.00 |

## PROCLAMATIONS.

SEC. 232.

Dec. 24, 1892.
27 Stat. L., 1052.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

### A PROCLAMATION.

Preamble.
Vol. 26, p. 1103.

Whereas, it is provided by section twenty-four, of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes"; that "The President of the United States may from time to time set apart and reserve, in any State or Territory having public lands bearing forests, in any part of the public lands wholly, or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations; and the President shall, by public proclamation, declare the establishment of such reservation, and the limits thereof."

And whereas, it is provided by section fourteen, of said above mentioned act, that the public lands in the Territory of Alaska, reserved for public purposes, shall not be subject to occupation and sale.

And whereas, the public lands in the Territory of Alaska, known as Afognak Island, are in part covered with timber, and are required for public purposes, in order that salmon fisheries in the waters of the island, and salmon and other fish and sea animals, and other animals and birds, and the timber, undergrowth, grass, moss, and other growth in, on, and about said island may be protected and preserved unimpaired, and it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation.

And whereas, the United States Commissioner of Fish and Fisheries has selected Afognak Bay, River and Lake, with their tributary streams, and the sources thereof, and the lands including the same on said Afognak Island, and within one mile from the shores thereof, as a reserve for the purpose of establishing fish culture stations, and the use of the United States Commission of Fish and Fisheries, the boundary lines of which include the head springs of the tributaries above mentioned, and the lands, the drainage of which is into the same.

Forest and fish-culture reservation, Alaska.

Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested by sections twenty-four and fourteen, of the aforesaid act of Congress, and by other laws of the United States, do reserve and do hereby make known and proclaim that there is hereby reserved from occupation and sale, and set apart as a public reservation, including use for fish culture stations, said Afognak Island, Alaska, and its adjacent bays and rocks

Afognak Island reserved from sale.

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and territorial waters, including among others the Sea Lion Rocks and Sea Ottter Island: *Provided*, That this proclamation shall not be so construed as to deprive any bona fide inhabitant of said island of any valid right he may possess under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington, on the thirtieth day of March, eighteen hundred and sixty-seven.

*Proviso.*
Bona fide inhabitants.

Warning is hereby expressly given to all persons not to enter upon, or to occupy, the tract or tracts of land or waters reserved by this proclamation, or to fish in, or use any of the waters herein described or mentioned, and that all persons or corporations now occupying said island, or any of said premises, except under said treaty, shall depart therefrom.

Warning not to enter, and all persons to depart.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-fourth day of December, in the year of our Lord one thousand eight hundred [SEAL.] and ninety-two, and of the independence of the United States the one hundred and sixteenth.

BENJ. HARRISON.

By the President:
JOHN W. FOSTER,
*Secretary of State.*

NOTE.—For sec. 24 see sec. 222, ante, and for sec. 14 referred to in this section see sec. 92[illegible], Title IV, Public lands.

SEC. 233.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

Aug. 20, 1902.
32 Stat. L., 2025.

## A PROCLAMATION.

Whereas, it is provided by section twenty-four of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes," "That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof";

Preamble.
Vol. 26, p. 1103.

And whereas, the following described public lands in the Territory of Alaska are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation;

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power in me vested by section twenty-four of the aforesaid act of Congress, do hereby make known and proclaim that there are hereby reserved from settlement, entry or sale, and set apart as a Public Reservation, Chichagof Island and the adjacent islands to the seaward thereof, Kupreanof Island, Kuiu Island, Zarembo Island, and Prince of Wales Island and the adjacent islands to the seaward thereof, in Alaska: *Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska.

Forest reserve, Alaska.

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Reserved from settlement.

Warning is hereby expressly given to all persons not to unlawfully enter upon or occupy any of the lands reserved by this proclamation.

The Alexander Archipelago Forest Reserve.

The reservation hereby established shall be known as the Alexander Archipelago Forest Reserve.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twentieth day of August, in the year of our Lord one thousand nine hundred and two [SEAL.] and of the Independence of the United States the hundred and twenty-seventh.

THEODORE ROOSEVELT.

By the President:

ALVEY A. ADEE,
*Acting Secretary of State.*

Charlton Code, p. 84.
NOTE.—For sec. 24 see sec. 222, ante.

SEC. 234.

July 20, 1907.
35 Stat. L., 2148.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Alexander Archipelago National Forest, Alaska. Preamble. Vol. 32, p. 2025.

Whereas, it appears that the public good would be promoted by excluding certain lands from the Alexander Archipelago National Forest, in the Territory of Alaska, established by proclamation issued August twentieth, nineteen hundred and two;

Boundaries modified. Vol. 30, p. 36.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the act of Congress approved June fourth, eighteen hundred and ninety-seven, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the area of the said National Forest is hereby changed, and that it now contains Chichagof Island and the adjacent islands to the seaward thereof, Kupreanof Island, Kuiu Island, Zarembo Island, and Prince of Wales Island, and the adjacent islands to the seaward thereof, in Alaska, excepting all that portion of Kasaan Peninsula, forming a part of Prince of Wales Island, which lies southeast of a line beginning at a point on Kasaan Bay due west of the United States location monument number five, and running thence, north forty-four degrees forty-two minutes east, six thousand nine hundred and ninety-six feet (approximately) to the most southwesterly point on the bay known as Lyman Anchorage: *Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska;

*Proviso.* Valid rights not affected. Vol. 15, p. 539.

Lands excepted.

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or

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claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the aforesaid national forest which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: *And provided*, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation.

Coal lands.
*Proviso.*

The lands hereby excluded from the aforesaid national forest which are not embraced in any other withdrawal, reservation, or appropriation, shall be restored to the public domain and become subject to settlement, appropriation, and disposition under the provisions, conditions, and restrictions applicable to such lands on such date and after such notice by publication as the Secretary of the Interior may prescribe, and no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun prior to such date and all such settlements and occupations are hereby forbidden.

Lands restored to public domain.

Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under the act of Congress, approved June eleventh, nineteen hundred and six, entitled, "An act to provide for the entry of agricultural lands within forest reserves:" *Provided*, That lands heretofore restored to settlement or entry under the provisions of the foregoing act shall be excepted from the force and effect of this proclamation.

Reserved from settlement.

Vol. 34, p. 233.

Lands excepted.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twentieth day of July, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.]

THEODORE ROOSEVELT.

By the President:
ALVEY A. ADEE,
*Acting Secretary of State.*

SEC. 235.

July 23, 1907.
35 Stat. L., 2149.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Whereas, the public lands in the Territory of Alaska, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by utilizing said lands as a national forest;

Chugach National Forest, Alaska.
Preamble.
*Post*, p. 39.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by section twenty-four of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes," do proclaim that there are hereby reserved from settlement, entry, or sale, and set apart as a public reservation, for the use and benefit of the people, all the tracts of land, in the Territory of Alaska, shown as the Chugach National Forest on the diagram forming a part hereof, and further described

National forest, Alaska.
Vol. 26, p. 1103.



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Description. as follows: All of the public land lying within a line beginning at the southern extremity of Cape Puget, Alaska, on the east coast of Kenai Peninsula; thence in a general northerly direction, following the coast line, to the western extremity of Portage Bay; thence northwesterly to the divide between Turnagain Arm and Portage Bay; thence in a general northerly direction along the divide between Knik Arm and Port Welles and in a general easterly direction along the main divide of the Chugach Mountains, continuing thence to a point on left bank of Copper River opposite the northern extremity of Cottonwood Island; thence southerly, down left bank of said Copper River, to its southern extremity; thence in a southwesterly direction to the southern extremity of Cape Cleare; thence in a northwesterly direction to the southern extremity of Cape Puget, the place of beginning, and embracing all islands within said described line;

Lands excepted. Excepting from the force and effect of this proclamation the several areas contained within boundaries formed by circles described with a radius of a mile, each, from the centers of the following named towns and settlements, to wit: Eyak, Orca, Tahtetlahk, Ellamar, Valdez, Fort Liscum, Einiklik, Chenaga, Nutchek, and Latouche:

*Proviso.* Valid rights not affected. Vol. 15, p. 539. *Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska;

Lands excepted. And further excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the national forest hereby established which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: *And provided*, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation.

*Proviso.*

Coal lands.

*Proviso.*

Reserved from settlement. Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under the act of Congress, approved June eleventh, nineteen hundred and six, entitled, "An act to provide for the entry of agricultural lands within forest reserves."

Vol. 34, p. 233.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

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Done at the city of Washington this twenty-third day of July, in the year of our Lord one thousand nine hundred and seven, [SEAL.] and of the independence of the United States the one hundred and thirty-second.

THEODORE ROOSEVELT.

By the President:
ROBERT BACON,
*Acting Secretary of State.*

NOTE.—For sec. 24, see sec. 222, ante.

SEC. 236.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

Sept. 10, 1907.
35 Stat. L., 2152.

## A PROCLAMATION.

Tongass National Forest, Alaska. Preamble.

Whereas, the public lands in the Territory of Alaska, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by utilizing said lands as a national forest;

National forest, Alaska. Vol. 26, p. 1103.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by section twenty-four of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes," do proclaim that there are hereby reserved from settlement, entry, or sale, and set apart as a public reservation, for the use and benefit of the people, all the tracts of land in the Territory of Alaska, shown as the Tongass National Forest on the diagram forming a part hereof:

*Proviso.* Valid rights not affected. Vol. 15, p. 539.

*Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska;

Lands excepted.

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the national forest hereby established which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: *And provided*, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation.

*Proviso.*

Coal lands.

*Proviso.*

Reserved from settlement. Vol. 34, p. 233.

Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under the act of Congress, approved June eleventh, nineteen hundred and

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Lands excepted.

six, entitled, "An act to provide for the entry of agricultural lands within forest reserves": *Provided*, That lands heretofore restored to settlement or entry under the provisions of the foregoing act shall be excepted from the force and effect of this proclamation.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this tenth day of September, in the year of our Lord one thousand nine hundred and seven, and of the independence of the United States the one hundred and thirty-second.

[SEAL.]

THEODORE ROOSEVELT.

By the President:
ALVEY A. ADEE,
*Acting Secretary of State.*

NOTE.—For sec. 24, see sec. 222, ante.

SEC. 237.

Sept. 18, 1907.
35 Stat. L., 2153.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Chugach National Forest, Alaska.
Preamble.
*Ante*, p. 35.

Whereas, it appears that the public good would be promoted by excluding certain lands from the Chugach National Forest, in the Territory of Alaska, established by proclamation issued July twenty-third, nineteen hundred and seven;

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virture of the power in me vested by the act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the area of the said national forest is hereby changed to exclude therefrom a tract of land extending one mile back from the tide line, on both sides of the bay known as Valdez Arm, following the tide line from its intersection with the line of 146° 30′ longitude west from Greenwich, easterly around the head of the Valdez Arm; and that the aforesaid national forest now contains, with the exception of the lands hereby excluded, all of the tracts of land, in the Territory of Alaska, shown as the Chugach National Forest on the diagram forming a part hereof; and further described as follows: All of the public land lying within a line beginning at the southern extremity of Cape Puget, Alaska, on the east coast of Kenai Peninsula; thence in a general northerly direction, following the coast line, to the western extremity of Portage Bay; thence northwesterly to the divide between Turnagain Arm and Portage Bay; thence in a general northerly direction along the divide between Knik Arm and Port Welles and in a general easterly direction along the main divide of the Chugach Mountains, continuing thence to a point on left bank of Copper River opposite the northern extremity of Cottonwood Island; thence southerly, down left bank of said Copper River, to its southern extremity; thence in a southwesterly direction to the southern extremity of Cape Cleare; thence in a northwesterly direction to the southern extremity of Cape Puget, the place of beginning, and embracing all islands within said described line; excepting from the force and effect of this proclamation the several areas contained within boundaries formed by circles described with a radius of a mile, each, from the centers of the following named towns and settlements, to wit: Eyak, Orca, Tahtetlahk, Ellamar, Valdez, Fort Liscum, Einiklik, Chenaga, Nutchek, and Latouche:

Boundaries modified.
Vol. 30, p. 36.
Description.

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*Provided*, That this proclamation shall not be construed so as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska; *Proviso.* Valid rights not affected. Vol. 15, p. 539.

And further excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the aforesaid national forest which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: *And provided*, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation. Lands excepted. *Proviso.* Coal lands. *Proviso.*

The lands hereby excluded from the aforesaid national forest which are not embraced in any other withdrawal, reservation, or appropriation, shall be restored to the public domain and become subject to settlement, appropriation, and disposition under the provisions, conditions, and restrictions applicable to such lands on such date and after such notice by publication as the Secretary of the Interior may prescribe, and no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun prior to such date and all such settlements and occupations are hereby forbidden. Lands restored to public domain.

Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under the act of Congress, approved June eleventh, nineteen hundred and six, entitled, "An act to provide for the entry of agricultural lands within forest reserves:" *Provided*, That lands heretofore restored to settlement or entry under the provisions of the foregoing act shall be excepted from the force and effect of this proclamation. Reserved from settlement. Vol. 34, p. 233. Lands excepted.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this eighteenth day of September, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.]

THEODORE ROOSEVELT.

By the President:

ALVEY A. ADEE,

*Acting Secretary of State.*

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EXECUTIVE ORDER.

July 2, 1908.

SEC. 238. It is hereby ordered that the names of the national forests mentioned in the left-hand column of the table given below shall, on and after July first, nineteen hundred and eight, be changed, and that such national forests shall be consolidated into national forests which shall bear the names shown in the right-hand column of the table:

| (Former names.) | (New name.) |
|---|---|
| ALASKA. | |
| Chugach and Afognak | Chugach. |
| Alexander Archipelago<br>Tongass | Tongass. |

* * * * * * *

THEODORE ROOSEVELT.

SEC. 239.

Feb. 16, 1909.
35 Stat. L., 2226.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Tongass National Forest, Alaska.
Preamble.
Procs., 1st sess., pp. 34, 38.

Whereas an Executive order dated July second, nineteen hundred and eight, consolidated the Alexander Archipelago and Tongass National Forests under the name of the Tongass National Forest; and

Whereas it appears that the public good would be promoted by adding to the Tongass National Forest certain lands within the Territory of Alaska, which are in part covered with timber:

Boundaries enlarged.
Vol. 30, p. 36.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the act of Congress approved June fourth, eighteen hundred and ninety-seven, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the Tongass National Forest is hereby enlarged and that its boundaries are as shown on the two parts of the diagram forming a part hereof, and further described as follows:

Description.

All of the public land lying within boundaries described as follows: Beginning at the point where the international boundary line between the Territory of Alaska and the Dominion of Canada intersects the left bank of the Skagway River; thence southwesterly down the left bank of the said river to a point five miles above the center of the town of Skagway; thence in a southeasterly and southwesterly direction, at a distance of five miles from the center of said town, to the east shore of Chilkoot Inlet; thence southerly along said shore to Lynn Canal; thence southeasterly through Lynn Canal and Favorite Channel to a point on the shore of Young Bay due east of the head of Hawk Inlet; thence westerly to the head of Hawk Inlet; thence in a general southwesterly, northwesterly, and southwesterly direction through Hawk Inlet, Icy Strait, passing between Pleasant Island and Lemesurier Island, through Inian Passage and Cross Sound to a point due west of Cape Bingham; thence southeasterly to a point sixty miles west of Cape Muzon; thence easterly to Cape Muzon; thence in a general easterly, northerly, northeasterly, and northwesterly direction along the said international boundary line to the summit of Elbow Mount, at an elevation of four thousand two hundred and thirty-five feet; thence northwesterly to the summit of the most westerly of Twin Peaks, at an elevation of seven thousand one hundred and eighty feet; thence northwesterly to the summit of a peak, having an elevation of five thousand eight hundred and twenty-

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one feet, on the said international boundary line; thence in a general northwesterly direction along the said international boundary line to the summit of a peak known as Devils Paw, having an elevation of eight thousand feet; thence in a south-westerly direction to the summit of a peak, having an elevation of five thousand nine hundred and seventy-seven feet, in Mendenhall Glacier; thence northwesterly to the summit of a peak, having an elevation of six thousand five hundred and fifty feet, on the said international boundary line; thence in a general northwesterly direction along the said international boundary line to the point where it intersects the left bank of the Skagway River, the place of beginning; and embracing all islands within said described boundaries;

Also all of the public land lying within boundaries described as follows: Beginning at the point where the sixtieth parallel of latitude intersects the international boundary line between the Territory of Alaska and the Dominion of Canada; thence due west along the said parallel to the middle of the channel of Yakutat Bay; thence in a southwesterly direction along the middle of the channel of said bay to a point due west of Ocean Cape; thence in a southeasterly direction to a point on the fifty-ninth parallel of latitude opposite the mouth of the Alsek River; thence easterly along said parallel to its intersection with the shore of Dry Bay; thence in a northwesterly direction along the shore of said bay to the left bank of the most easterly outlet of Alsek River; thence in a general northerly direction along the left bank of said river to a point midway between the mouth of the river and the intersection of the river with the said international boundary line; thence in a northwesterly direction to the foot of Yakutat Glacier; thence in a northerly direction to the summit of Mount Ruhamah, on the said international boundary line; thence in a northwesterly direction along the said international boundary line to its intersection with the sixtieth parallel of latitude, the place of beginning; and embracing all islands within said described boundaries;

Lands excepted.

Excepting from the force and effect of this proclamation the several areas contained within boundaries formed by circles described with a radius of five miles, each, from the centers of the following named towns and settlements, to wit: Juneau, Douglas, Treadwell, and Sitka; also the several areas contained within boundaries formed by circles described with a radius of one mile, each, from the centers of the following-named towns and settlements, to wit: Snettishan, Sumdum, Windham, and Loring; also the areas contained within boundaries formed by circles described with a radius of two miles, each, from the centers of the towns of Petersburg and Wrangell; also Annette and Pennock Islands; also all the northern portion of Gravina Island which lies above a line running from the head of Vallenar Bay southeasterly to the head of Blank Inlet; also all that portion of Revillagigedo Island lying southwest of a line beginning at a point at the head of Wards Cove, and running thence in a southeasterly direction, at a distance of two miles from the shores of Tongass Narrows, to a point on Carroll Inlet; and also all that portion of Kasaan Peninsula, forming a part of Prince of Wales Island, which lies southeast of a line beginning at a point on Kasaan Bay due west of the United States location monument numbered five, and running thence north forty-four degrees forty-two minutes east, six thousand nine hundred and ninety-six feet (approximately) to the most southwesterly point on the bay known as Lyman Anchorage:

*Proviso.* Valid rights not affected.

*Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United

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Vol. 15, p. 539.

States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska.

Prior rights not affected.

The withdrawal made by this proclamation shall, as to all lands which are at this date legally appropriated under the public land laws or reserved for any public purpose, be subject to and shall not interfere with or defeat legal rights under such appropriation, nor prevent the use for such public purpose of lands so reserved, so long as such appropriation is legally maintained or such reservation remains in force.

Agricultural lands.
Vol. 34, p. 233.

This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry under the act of Congress approved June eleventh, nineteen hundred and six, entitled "An act to provide for the entry of agricultural lands within forest reserves."

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this sixteenth day of February, in the year of our Lord one thousand nine hundred and [SEAL.] nine, and of the Independence of the United States the one hundred and thirty-third.

THEODORE ROOSEVELT.

By the President:
ROBERT BACON,
*Secretary of State.*

SEC. 240.

Feb. 23, 1909.
35 Stat. L., 2231.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Chugach National Forest, Alaska.
Preamble.
Procs., 1st sess., pp. 35, 39.
Vol. 27, p. 1052.

Whereas, an Executive order dated July second, nineteen hundred and eight, consolidated the Chugach National Forest and the Afognak Forest and Fish Culture Reserve under the name of the Chugach National Forest;

And whereas, it appears that the public good would be promoted by adding to the Chugach National Forest certain lands within the Territory of Alaska, which are in part covered with timber;

Boundaries enlarged.
Vol. 30, p. 36.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the Chugach National Forest is hereby enlarged and that its boundaries are as shown on the diagram forming a part hereof, and further

Description.

described as follows: The island of Afognak and the adjacent islands which were set apart by proclamation dated December twenty-fourth, eighteen hundred and ninety-two, as the "Afognak Forest and Fish Culture Reserve," and also all of the public land lying within a line beginning at a point on the left bank of Copper River, due east of the northern extremity of Cottonwood Island; thence easterly along the divide between the watershed of Bremner River and Chitina River to a point due north of the southern extremity of Cape Suckling; thence due south to the southern extremity of Cape Suckling; thence in a northwesterly direction to the southern extremity of the left bank of Copper River; thence in a southwesterly direction to the southern extremity of Cape Cleare; thence in a northwesterly direction to the southern extremity of Cape Puget; thence in a general northwesterly

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direction along the divide of the foothills to its intersection with the main divide of the Kenai Mountains; thence in a general westerly direction along said main divide, between the waters of Resurrection Bay and Kenai Lake, and continuing southwesterly along said main divide to the head of Sheep Creek; thence southerly down the left bank of said creek to Kachemak Bay; thence in a general southerly, westerly, and northerly direction along the shores of said bay, Cook Inlet, and Knik Arm, at the mean low tide line, to the right bank of Knik River; thence easterly up the right bank of Knik River to the main divide of the Chugach Mountains; thence in a general easterly direction along the main divide of the Chugach Mountains to a point on the left bank of Copper River, due east of the northern extremity of Cottonwood Island, the place of beginning, and embracing all islands within said described line;

Lands excepted.

Excepting from the force and effect of this proclamation the several areas contained within boundaries formed by circles described with a radius of a mile, each, from the centers of the following-named towns and settlements, to wit: Eyak, Orca, Tahtetlahk, Ellamar, Valdez, Fort Liscum, Einiklik, Chenaga, Nutchek, and Latouche; excepting also a tract of land extending one mile back from the tide line, on both sides of the bay known as Valdez Arm; following the tide line from its intersection with the line of one hundred and forty-six degrees thirty minutes longitude west from Greenwich, easterly around the head of Valdez Arm:

*Proviso.* Valid rights not affected. Vol. 15, p. 539.

*Provided*, That this proclamation shall not be so construed as to deprive any person of any valid right possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska.

Prior rights not affected.

The withdrawal made by this proclamation shall, as to all lands which are at this date legally appropriated under the public-land laws or reserved for any public purpose, be subject to, and shall not interfere with or defeat legal rights under such appropriation, nor prevent the use for such public purpose of lands so reserved, so long as such appropriation is legally maintained, or such reservation remains in force.

Fish-culture stations. Vol. 27, p. 1052.

Since the withdrawal made by this proclamation for forest purposes and the withdrawal made by proclamation dated December twenty-four, eighteen hundred and ninety-two, for the purpose of establishing fish-culture stations and for the use of the United States Commissioner of Fish and Fisheries are consistent, both shall be effective upon the land withdrawn, but the withdrawal for fish-culture stations and for the use of the United States Commissioner of Fish and Fisheries shall be the dominant one.

Agricultural lands. Vol. 34, p. 233.

This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry under the act of Congress approved June eleventh, nineteen hundred and six, entitled, "An act to provide for the entry of agricultural lands within forest reserves."

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-third day of February, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States the one hundred and thirty-third.

[SEAL.]

THEODORE ROOSEVELT.

By the President:

ROBERT BACON,
*Secretary of State.*

NOTE.—See sec. 238, ante.

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SEC. 241.

Mar. 23, 1910.
36 Stat. L., 2601.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA,

A PROCLAMATION.

Sitka National Monument, Alaska. Preamble.

Whereas within the limits of the public park created by proclamation June twenty-first, eighteen hundred and ninety, near Sitka, Alaska, is located the decisive battle ground of the Russian conquest of Alaska in eighteen hundred and four, and also the site of the former village of the Kik-Siti Tribe, the most warlike of the Alaskan Indians; and that here also are the graves of a Russian midshipman and six sailors, killed in the conflict, and numerous totem poles constructed by the Indians, which record the genealogical history of their several clans, and

Whereas under the general laws of Alaska it has been found difficult to prevent vandalism within the reserved area,

National Monument, Sitka, Alaska. Vol. 34, p. 225.

Now, therefore, I, William H. Taft, President of the United States of America, by virtue of the power vested in me by section two of the act of Congress approved June eighth, nineteen hundred and six, entitled "An act for the preservation of American antiquities," do hereby set aside, subject to any vested right, as the Sitka National Monument, a tract of land near Sitka, Alaska, situated within, or chiefly within, the public park which embraces the mouth of Indian River and adjacent territory, created by proclamation of June twenty-first, eighteen hundred and ninety, the same being more definitely located and described as follows:

Description.

Beginning at corner numbered two of the Presbyterian Mission site on the easterly side thereof; thence north twenty-four degrees, fifty-four minutes east, along the line of said mission tract, crossing Indian River, to a point seven chains and fifty-eight links from the right bank of said river; thence south forty-two degrees east, thirty-three chains and eighty-five links, to a point north fifty-one degrees, thirty minutes east, ninety-one links from a post on high tide line designated "Haley's initial post;" thence south fifty-one degrees, thirty minutes west, crossing the mouth of Indian River to a pine tree on Indian Point; thence following the meanders of the high tide line of Sitka Bay southwesterly and northwesterly to the place of beginning; embracing approximately fifty-seven acres of land, as shown upon the diagram hereto attached and made a part of this proclamation.

Reservation from settlement, etc.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, or destroy any feature of this national monument, or to locate or settle upon any of the lands reserved by this proclamation.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-third day of March, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States the one hundred and thirty-fourth.

[SEAL.]

WM. H. TAFT.

By the President:
P. C. KNOX,
*Secretary of State.*

EXECUTIVE ORDER.

CHUGACH NATIONAL FOREST, ALASKA.

October 28, 1910.
30 Stat. L., pp. 34 and 36.

SEC. 242. Under authority of the act of Congress of June fourth, eighteen hundred and ninety-seven, and on the recommendation of

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the Secretary of Agriculture, it is hereby ordered that the proclamation of February twenty-third, nineteen hundred and nine, enlarging the Chugach National Forest, be modified to reduce the area of such national forest by eliminating therefrom the following-described tract, containing approximately twelve thousand eight hundred acres of land, which has been found, upon examination, to be not chiefly valuable for national forest purposes:

Beginning at a point where the meridian of longitude one hundred and forty-four degrees five minutes west crosses the coast line of Controller Bay; thence north along said meridian line to the parallel of latitude at sixty degrees and ten minutes north; thence west along said parallel to a point where the same crosses the coast line at or near the mouth of Bering River; and thence along the coast to the place of beginning.

The tract above described is hereby restored to the public domain.

WM. H. TAFT.

*History of Chugach National Forest.*

RECAPITULATION.

| | Acres. |
|---|---|
| Afognak, first proclamation, created Dec. 24, 1892——area—— | 403,640 |
| Chugach, first proclamation, created July 23, 1907——do—— | 4,960,000 |
| Chugach, former area | 4,960,000 |
| Chugach, second proclamation, elimination, Sept. 18, 1907 | 83,000 |
| Chugach, new area, Sept. 18, 1907 | 4,927,000 |
| Chugach, Executive order, July 1, 1908, consolidated: | |
| Afognak | 403,640 |
| Chugach | 4,927,000 |
| Total area, July 1, 1908 | 5,330,640 |
| Chugach, third proclamation, addition, Feb. 23, 1909 | 5,950,000 |
| Total area, Feb. 23, 1909 | 11,280,640 |
| Chugach, former area | 11,280,640 |
| Chugach, Executive order, elimination, Oct. 28, 1910 | 12,800 |
| Total area, Oct. 28, 1910 | 11,267,840 |
| Chugach area is revised to conform to recent surveys and computations and now contains | 11,267,850 |

*History of Tongass National Forest.*

| | Acres. |
|---|---|
| Alexander Archipelago, first proclamation, created, Aug. 20, 1902 | 4,506,240 |
| Alexander Archipelago, second proclamation, elimination, July 20, 1907 | 11,878 |
| | 4,494,362 |
| Tongass, first proclamation, created, Sept. 10, 1907 | 2,262,624 |
| Tongass, Executive order, consolidated, July 1, 1908: | |
| Tongass | 2,262,624 |
| Alexander Archipelago | 4,494,362 |
| Total area, July 1, 1908 | 6,756,986 |
| Tongass, former area | 6,756,986 |
| Tongass, second proclamation, addition, Feb. 16, 1909 | 8,724,000 |
| Total area, Feb. 16, 1909 | 15,480,986 |
| Tongass area is revised to conform to recent surveys and computations and now contains | 15,481,000 |

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# TITLE VI.

## AGRICULTURE.

(Department of Agriculture.)

## CHAPTER ONE.

SEC. 243. Appropriations for experimental stations in Alaska.

Apr. 23, 1897.

30 Stat. L., 6. Appropriation to investigate the agricultural resources of Alaska.

Five thousand dollars is hereby appropriated, which sum may be expended by the Secretary of Agriculture to investigate and report to Congress upon the agricultural resources and capabilities of Alaska, with special reference to the desirability and feasibility of the establishment of agricultural experiment stations in such Territory as has been done in other States and Territories, and the selection of suitable locations for such stations.

NOTE.—March 22, 1898, an appropriation of $10,000 was made for the same purpose. (30 Stat. L., 335.)

March 1, 1899 (30 Stat. L., 953), an appropriation of $12,000 was made for the same purpose, and to establish and maintain agricultural experiment stations in said Territory.

May 25, 1900 (31 Stat. L., 198), an appropriation of $12,000 was made for the same purpose as last appropriation.

March 2, 1901 (31 Stat. L., 935), an appropriation of $12,000 for the same purpose.

March 1, 1901 (31 Stat. L., 2006), joint resolution authorizing the printing of five thousand copies of the fourth report on the agricultural investigations in Alaska.

June 3, 1902 (32 Stat. L., 301), an appropriation of $15,000 for the same purpose as last appropriation.

March 3, 1903 (32 Stat. L., 1164), an appropriation of $15,000 for the same purpose.

April 23, 1904 (33 Stat. L., 294), an appropriation of $15,000 for the same purpose and providing that the Secretary of Agriculture is authorized to sell such products as are obtained on the lands belonging to the agricultural experiment station in Alaska.

March 3, 1905 (33 Stat. L., 881), an appropriation of $18,000 for the same purpose and for the purpose of purchase and introduction of live stock for experimental purposes.

June 30, 1906 (34 Stat. L., 693), an appropriation of $18,000 for the same purpose as the last appropriation.

March 4, 1907 (34 Stat. L., 1279), an appropriation of $24,000 for the maintenance of experiment stations, and also providing for the sale of the products of said stations.

May 23, 1908 (35 Stat. L., 266), an appropriation of $26,000 for the maintenance of experiment stations in Alaska.

March 4, 1909 (35 Stat. L., 1055), an appropriation of $28,000 for the same purpose as last appropriation.

May 16, 1910 (36 Stat. L., 438), an appropriation of $28,000 for the same purpose as last appropriation.

March 4, 1911 (36 Stat. L., 1262), an appropriation of $30,000 for the same purpose as last appropriation.

NOTE.—Experiment stations were established in Alaska as follows: At Sitka, 1898; Kodiak, 1898; Kenai, 1899; Rampart, 1900; Copper Center, 1902; and Fairbanks, 1906.

For information relative to experiment stations, see report to Congress 1898, 1899, and for further information apply to the Department of Agriculture.



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# TITLE VII.

## FISH AND FISHERIES.

(Department of Commerce and Labor, Bureau of Fisheries.)


| Chap. | | Sec. |
|---|---|---|
| 1. | Departmental control; appropriations, etc | 244 |
| 2. | Aliens prohibited from fishing in the waters of Alaska | 254 |
| 3. | Salmon fisheries | 259 |
| 4. | Seal fisheries | 276 |


## CHAPTER ONE.

### DEPARTMENTAL CONTROL.


Sec.
244. Control of fish and fisheries transferred to Department of Commerce and Labor.
245. Provision for appointment of Commissioner of Fish and Fisheries.
(See note under this section giving reference to prior acts, etc.)
246. Commissioner of Fish and Fisheries to make estimates annually for expenses of his office.
247. Proclamation of President of convention between the United States and Great Britain relating to fisheries in United States and Canadian waters.
248. Appropriation for commissioner under Canadian treaty.
249. Appropriation for commissioner under Canadian treaty for 1911.
250. Appropriation for purchase of steam vessel for use of inspection in Alaska.
251. Appropriation for establishment of one or more fish hatcheries in Alaska.
252. Division of Alaska fisheries; salaries. Fur-seal fisheries. Protecting seal fisheries, food to natives, etc. Salmon fisheries.
253. Right reserved to establish fish hatcheries on Kodiak and Afognak Islands, also to regulate the taking of salmon, also excepting the Pribilof group or the seal islands from sale.


Feb. 14, 1903.
32d Stat. L., 828.
Control of Alaskan fisheries and of immigration.

SEC. 244. That the jurisdiction, supervision, and control now possessed and exercised by the Department of the Treasury over the fur-seal, salmon, and other fisheries of Alaska and over the immigration of aliens into the United States, its waters, territories, and any place subject to the jurisdiction thereof, are hereby transferred and vested in the Department of Commerce and Labor.

Charlton Code, p. 85.

Jan. 20, 1888.
25 Stat. L., 1.
Fish Commissioner.
R. S., sec. 4395, p. 851, amended.
1st Supp., R. S., 577.
Commissioner of Fish and Fisheries.
Salary.
Not to hold any other office.

SEC. 245. That there shall be appointed by the President, by and with the advice and consent of the Senate, a person of scientific and practical acquaintance with the fish and fisheries to be a Commissioner of Fish and Fisheries, and he shall receive a salary at the rate of five thousand dollars a year, and he shall be removable at the pleasure of the President. Said commissioner shall not hold any other office or employment under the authority of the United States or any State.

NOTE.—The following are the acts relating to the Fish Commission:

Act. Feb. 9, 1871.
16 Stat. L., 594.

By R. S., secs. 4395 to 4398, the appointment of a Commissioner of Fish and Fisheries was authorized from among the civil officers or employees of the Government to serve without additional salary. His duties are prescribed, and the heads of the departments are to render all necessary aid.



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By act of 1880, May 31, ch. 113 (1 Supp., R. S., 289), the vessels of the Fish Commission are placed on the same footing with the Navy Department as those of the Coast Survey.

By act of 1881, Feb. 14, Res. No. 12 (1 Supp., R. S., 328), the Public Printer is instructed to print an annual volume for the Fish Commission.

By act of 1882, Aug. 7, ch. 433, par. 15 (1 Supp., R. S., 382), duplicate specimens of fish may be distributed to institutions of learning by the Fish Commission.

By act of 1883, Mar. 3, ch. 143, par. 7 (1 Supp., R. S., 421), the Fish Commissioner is authorized to designate, from the employees of the commission, an assistant to discharge his duties if absent or disabled.

By act of 1885, Mar. 3, ch. 360, par. 1 (1 Supp., R. S., 486), the Secretary of the Treasury is authorized to detail officers and men of the Revenue Marine Service for duty under the Fish Commission.

By act of 1887, Mar. 3, ch. 382, par. 3 (1 Supp., R. S., 563), the Fish Commissioner is directed to submit annually to Congress a detailed statement of expenditures for "propagation of food fishes."

By act of 1888, Jan. 20, ch. 1 (1 Supp., R. S., 577), R. S., sec. 4395 is amended to provide for the appointment of a Commissioner of Fish and Fisheries, at a salary of $5,000, who shall not hold any other office under the United States.

The above act provides for annual estimates for employees.

By act of 1893, Mar. 3, ch. 208, par. 4, the Fish Commissioner is requested to investigate and report upon seal life on the Pribilof Islands and in Bering Sea.

Aug. 5, 1892.
27th Stat. L., 349. R. S. 2d Supp. 66.
Commissioner of Fish & Fisheries to make estimates of expenses of his office.

SEC. 246. The Commissioner of Fish and Fisheries shall embrace in the estimates of appropriations for the Fish Commission for the fiscal year ending eighteen hundred and ninety-four, and each year thereafter estimates for all officers, clerks, and other employees whose services are permanent and continuous in their character and deemed to be necessary for an efficient and economical execution of the appropriations for the Fish Commission.

SEC. 247.

April 11, 1908.
35th Stat. L., 2000.

*Convention between the United States and Great Britain relating to fisheries in United States and Canadian waters. Signed at Washington, April 11, 1908; ratification advised by Senate, April 17, 1908; ratified by the President, May 11, 1908; ratified by Great Britain, May 12, 1908; ratifications exchanged at Washington, June 4, 1908; proclaimed, July 1, 1908.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Proclamation of President of convention between the United States and Great Britain relating to fisheries in United States and Canadian waters.
Fisheries in United States and Canadian waters.
Preamble.

Whereas a convention between the United States of America and the United Kingdom of Great Britain and Ireland, providing for the adoption of uniform and effective measures for the protection, preservation, and propagation of the food fishes in the waters contiguous to the United States and the Dominion of Canada, was concluded by their respective plenipotentiaries at Washington, on the eleventh day of April, one thousand nine hundred and eight, the original of which convention is word for word as follows:

Contracting parties.

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, equally recognizing the desirability of uniform and effective measures for the protection, preservation, and propagation of the food fishes in the waters contiguous to the United States and the Dominion of Canada, have resolved to conclude a convention for these purposes, and have named as their plenipotentiaries:

Plenipotentiaries.

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

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His Britannic Majesty, the Right Honorable James Bryce, O. M., His Majesty's Ambassador Extraordinary and Plenipotentiary at Washington;

Who, having exchanged their full powers, found in due form, have agreed to and signed the following articles:

ARTICLE I.

International Fisheries Commission. Appointment of commissioners. *Post*, p. 367.

The times, seasons, and methods of fishing in the waters contiguous to the United States and Canada as specified in Article IV of this convention, and the nets, engines, gear, apparatus, and appliances which may be used therein, shall be fixed and determined by uniform and common international regulations, restrictions, and provisions; and to that end the high contracting parties agree to appoint, within three months after this convention is proclaimed, a commission to be known as the International Fisheries Commission, consisting of one person named by each Government.

ARTICLE II.

International regulations to be prepared.

It shall be the duty of this International Fisheries Commission, within six months after being named, to prepare a system of uniform and common international regulations for the protection and preservation of the food fishes in each of the waters prescribed in Article IV of this convention, which regulations shall embrace close seasons, limitations as to the character, size, and manner of use of nets, engines, gear, apparatus, and other appliances; a uniform system of registry by each Government in waters where required for the more convenient regulation of commercial fishing by its own citizens or subjects within its own territorial waters or any part of such waters; an arrangement for concurrent measures for the propagation of fish; and such other provisions and measures as the commission shall deem necessary.

ARTICLE III.

Enforcement of regulations.

The two Governments engage to put into operation and to enforce by legislation and executive action, with as little delay as possible, the regulations, restrictions, and provisions with appropriate penalties for all breaches thereof; and the date when they shall be put into operation shall be fixed by the concurrent proclamations of the President of the United States and the Governor General of the Dominion of Canada in council.

Jurisdiction.

And it is further agreed that jurisdiction shall be exercised by either Government, as well over citizens or subjects of either party apprehended for violation of the regulations in any of its own waters to which said regulations apply as over its own citizens or subjects found within its own jurisdiction who shall have violated said regulations within the waters of the other party.

ARTICLE IV.

Waters governed by the regulations.

It is agreed that the waters within which the aforementioned regulations are to be applied shall be as follows: (1) The territorial waters of Passamaquoddy Bay; (2) the St. John and St. Croix Rivers; (3) Lake Memphremagog; (4) Lake Champlain; (5) the St. Lawrence River, where the said river constitutes the international boundary; (6) Lake Ontario; (7) the Niagara River; (8) Lake Erie; (9) the waters connecting Lake Erie and Lake Huron, including

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Lake St. Clair; (10) Lake Huron, excluding Georgian Bay but including North Channel; (11) St. Mary's River and Lake Superior; (12) Rainy River and Rainy Lake; (13) Lake of the Woods; (14) the Strait of San Juan de Fuca, those parts of Washington Sound, the Gulf of Georgia and Puget Sound lying between the parallels of 48° 10′ and 49° 20′; (15) and such other contiguous waters as may be recommended by the International Fisheries Commission and approved by the two Governments. It is agreed on the part of Great Britain that the Canadian Government will protect by adequate regulations the food fishes frequenting the Fraser River.

Protection to food fishes.

Charts, etc.

The two Governments engage to have prepared, as soon as practicable, charts of the waters described in this article, with the international boundary line indicated thereon; and to establish such additional boundary monuments, buoys, and marks as may be recommended by the commission.

ARTICLE V.

Vacancies, etc.

The International Fisheries Commission shall continue in existence so long as this convention shall be in force, and each Government shall have the power to fill, and shall fill from time to time, any vacancy which may occur in its representation on the commission. Each Government shall pay its own commissioner, and any joint expenses shall be paid by the two Governments in equal moieties.

ARTICLE VI.

Duration.

The regulations, restrictions, and provisions provided for in this convention shall remain in force for a period of four years from the date of their executive promulgation, and thereafter until one year from the date when either the Government of the United States or of Great Britain shall give notice to the other of its desire for their revision; and immediately upon such notice being given the commission shall proceed to make a revision thereof, which revised regulations, if adopted and promulgated by the President of the United States and the Governor General of Canada in council, shall remain in force for another period of four years and thereafter until one year from the date when a further notice of revision is given as above provided in this article. It shall, however, be in the power of the two Governments, by joint or concurrent action upon the recommendation of the commission, to make modifications at any time in the regulations.

Revision.

Modifications.

ARTICLE VII.

Exchange of ratifications.

The present convention shall be duly ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty, and the ratifications shall be exchanged in Washington as soon as practicable.

Signatures.

In faith whereof, the respective plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at Washington the eleventh day of April, in the year of our Lord one thousand nine hundred and eight.

ELIHU ROOT. [SEAL.]
JAMES BRYCE. [SEAL.]

Ratification.

And whereas the said convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged

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in the city of Washington, on the fourth day of June, one thousand nine hundred and eight;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof. Proclamation.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this first day of July, in the year of our Lord one thousand nine hundred and eight, and of the independence of the United States of America the one hundred and thirty-second.

[SEAL.]

THEODORE ROOSEVELT.

By the President:

ALVEY A. ADEE,
*Acting Secretary of State.*

SEC. 248. For the payment of the compensation of a commission on the part of the United States under the convention between the United States and Great Britain concerning the fisheries in waters contiguous to the United States and the Dominion of Canada, signed at Washington on April eleventh, nineteen hundred and eight, and of the share of the United States of the expenses that may be incurred in putting into operation and carrying out the convention during the fiscal year ending June thirtieth, nineteen hundred and ten, ten thousand dollars, or so much thereof as may be necessary. Fishery Commission, Canadian. Treaties, p. 366. 35th Stat. L., 380. May 28, 1910.

SEC. 249. For the payment of the compensation of a commission on the part of the United States under the convention between the United States and Great Britain concerning the fisheries in waters contiguous to the United States and the Dominion of Canada, signed at Washington on April eleventh, nineteen hundred and eight, and of the share of the United States of the expenses that may be incurred in putting into operation and carrying out the convention during the fiscal year ending June thirtieth, nineteen hundred and twelve, ten thousand dollars. Fishery Commission, Canadian. Vol. 35, p. 2000. Mar. 3, 1911. 36th Stat. L., 1033.

SEC. 250. For purchase or construction of a steam vessel for use in the Alaska salmon inspection and in connection with the propagation of salmon in Alaska, twenty thousand dollars. Vessel for salmon fisheries. May 27, 1908. 35th Stat. L., 342.

SEC. 251. For the establishment of one or more hatcheries in Alaska for the propagation of salmon and other food fishes, at points to be selected by the Secretary of Commerce and Labor, including the purchase of sites, construction of necessary buildings and ponds, purchase and hire of boats, equipment, and such temporary help as may be required for construction and operation of the hatcheries, to be immediately available, fifty thousand dollars. Salmon fisheries, hatcheries, etc. March 3, 1905. 33d Stat. L., 1181.

For the protection of the salmon fisheries of Alaska, including salaries of one agent, at two thousand five hundred dollars, and one assistant agent, at two thousand dollars, seven thousand dollars. Agents.

By act of March 4, 1907, chapter 2918 (34 Stat. L., 1329), a further sum of twenty thousand dollars was appropriated for same purposes. Additional appropriation.

SEC. 252. Division of Alaska Fisheries: Chief of division, three thousand five hundred dollars; assistant, one thousand eight hundred dollars; clerk of class two, one thousand four hundred dollars; clerk of class one, one thousand two hundred dollars; clerk, nine hundred dollars; agent, fur-seal fisheries, three thousand six hundred and fifty dollars; assistant agent, fur-seal fisheries, two thousand nine hundred and twenty dollars; two assistant agents, fur-seal fisheries, at two Division of Alaska fisheries. Salaries. Fur-seal fisheries.



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thousand one hundred and ninety dollars each; naturalist, fur-seal fisheries, three thousand dollars; janitor service, fur-seal fisheries, four hundred and eighty dollars; two physicians, Pribilof Islands, at one thousand two hundred dollars each; two school-teachers, Pribilof Islands, at one thousand two hundred dollars each; storekeeper, Pribilof Islands, one thousand eight hundred dollars; agent, Alaska salmon fisheries, two thousand five hundred dollars; inspector, Alaska salmon fisheries, one thousand eight hundred dollars; assistant agent, Alaska salmon fisheries, two thousand dollars; assistant agent, Alaska salmon fisheries, one thousand eight hundred dollars; warden, Alaska Service, one thousand two hundred dollars; four deputy wardens, Alaska Service, at six hundred dollars each; in all, forty-one thousand five hundred and thirty dollars.

Salmon fisheries.

Wardens.

Alaska Fisheries Service.

Protecting seal fisheries.

Food to natives, etc.

Alaska Fisheries Service: For protecting the seal fisheries of Alaska, including the furnishing of food, fuel, and clothing and other necessities of life to the natives of the Pribilof Islands, Alaska, transportation of supplies to and from the islands, expenses of travel of agents and other employees, purchase, hire, and maintenance of vessels, including crews for same, and for all other expenses necessary to carry out the provisions of the act of April twenty-first, nineteen hundred and ten, entitled "An act to protect the seal fisheries of Alaska and for other purposes; and for the protection of the salmon fisheries of Alaska, including travel, hire of boats, employment of temporary labor, and all other necessary expenses connected therewith," one hundred thousand dollars, to be immediately available.

Public Laws, 2d sess., p. 326.

Salmon fisheries.

Mineral, etc., lands, reserved.

March 3, 1891. 26th Stat. L., 1101.

SEC. 253. That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island of Kodiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last three preceding sections of this act. No portion of the islands of the Pribilof Group or the Seal Islands of Alaska shall be subject to sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.

Fish culture stations.

Missionary stations.

Seal Islands reserved.

Salmon fisheries.

NOTE.—The two preceding sections referred to in this section are found in chapter 2, Title IV, Public Lands, and are §§ 92½ and 92⅔ of this code.

GENERAL LEGISLATION.

Dec. 31, 1792.

1 Stat. L., 287. R. S., sec. 4131.

NOTE.

This act provides when vessels engaged in fisheries are to be deemed vessels of the United States.

Feb. 17, 1793.

1 Stat. L., 305. R. S., 4311.

This act provides for enrolled vessels of twenty tons and upward—may engage in fisheries.

Feb. 18, 1793.

1 Stat. L., 306. Amended in 1877, Feb. 27, 19 Stat. L., 251, R. S., 4320.

This act provides for licensing vessels carrying on coasting trade or fisheries. The same act provides for form of license, etc.

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| | |
|---|---|
| This section provides for reporting change of masters. | Ibid., R. S., 4835. |
| This section prohibits vessels licensed for fisheries from carrying merchandise of foreign countries. | Ibid., R. S., 4365. Ibid., R. S., 4371. |
| This section provides for penalty for being without license. | June 19, 1813, as amended by act of Mar 3, 1865, being R. S., 4391 to 4398. |
| This act provides for the regulation of fisheries. It first provides for agreement between master and men for fishing voyage, penalties for violating agreement, etc. | July 14, 1870. |
| This act provides that vessels engaged in whale or other fisheries are exempt from tonnage or clearance fees. | 16 Stat. L., 110. R. S., 4220. |
| This act provides that there shall be appointed by the President, by and with the advice and consent of the Senate, from among civil officers, a Commissioner of Fish and Fisheries, who shall serve without additional salary. The act also prescribes his duties, and that he shall make investigation into the subject of diminution of number of food fishes. | Feb. 19. 1871. 16 Stat. L., 594. R. S., 4395. |
| This act refers to fishing in the Potomac River, and prohibits the use of certain nets, or catching black bass or salmon with hook and lines, etc. | Apr. 6, 1880. 21 Stat. L., 71. R. S., 1st Supp., p. 279. |
| This act provides that Fish Commission vessels shall be on same footing as Coast Survey. | May 31, 1880. 21 Stat. L., 150. R. S., 1 Supp., p. 289. |
| Joint resolution authorizing the Public Printer to print the reports of the United States Fish Commissioner, etc. | Feb. 14, 1881. 21 Stat. L., 517. R. S., 1st Supp., p. 328. |
| This act provides for the distribution of duplicate specimens of fish among colleges, etc., by the Fish Commission. | Aug. 7, 1882. R. S., 1st Supp., p. 382. |
| This act provides that the Commissioner of Fish and Fisheries may designate from his employees an assistant to discharge his duties in case of absence or disability, without extra compensation. | Mar. 3, 1883. 22 Stat. L., 603. R. S., 1st Supp., p. 421. |
| Joint resolution terminating treaty with Great Britain in 1825, and repealing act of Congress of May 8, 1871, relating to fisheries, so far as it relates to the articles of said treaty. | Mar. 3, 1883. 22 Stat. L., 641. R. S., 1st Supp., p. 422. |
| This act provides that the Secretary of the Treasury may detail any officers or men of the Revenue or Marine Service for duty under the Commissioner of Fish and Fisheries. | Mar. 3, 1885. 23 Stat. L., 478. R. S., 1st Supp., p. 486. |
| This act prohibits for five years the taking of Spanish mackerel from the first day of March to the first day of June of each year, except with hook and line. | Feb. 28, 1887. 24 Stat. L., 434. R. S., 1st Supp., p. 548. |
| This act provides that when American fishing vessels are denied any rights and privileges in the waters and ports of the British Dominion the President may issue a proclamation denying the same rights to vessels and their masters of the British Dominion. | Mar. 3, 1887. 24 Stat. L., 475. R. S., 1st Supp., 555. |
| This act provides that the Fish Commissioner shall submit detailed statement of expenditures for past year and also estimates at the beginning of each session of Congress. | Mar. 3, 1887. 24 Stat. L., 509. R. S., 1st Supp., p. 563. |
| This act provides for the President's appointing a Commissioner of Fish and Fisheries at a salary of $5,000 a year. | Jan. 20, 1888. 25 Stat. L., 1. R. S., 1st Supp., p. 577. |
| This act provides that the Secretary of War, in his discretion, may direct and cause to be constructed practical and sufficient fishways. | Aug. 11, 1888. 25 Stat. L., 400. R. S., 1st Supp., p. 610. |
| Departmental control transferred from Secretary of the Treasury to the Department of Commerce and Labor. | Feb. 14, 1903. 32 Stat. L., 828. |
| Proclamation of President Harrison reserving of Afognak Island for fish-culture station. | Dec. 24, 1892. 27 Stat. L., 1052. |
| Proclamation of the President of convention between the United States and Great Britain relating to fisheries in United States and Canadian waters. | Apr. 11. 1908. 35 Stat. L., 2000. |
| Provision made for Division of Alaskan Fisheries. Chief of division, assistants, clerks, etc., provided for. | Mar. 4, 1911. 36 Stat. L., 1439. |

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# CHAPTER TWO.

## ALIENS PROHIBITED FROM FISHING IN THE WATERS OF ALASKA.

Sec.
254. Aliens prohibited from fishing in waters, except with rod, etc.; sale of fish to aliens permitted; alien labor may be employed.
255. Penalty; fines made a lien upon vessels.
256. Prosecutions may be had in the District Court of Alaska, California, Oregon, or Washington.
257. Collector of customs may search and seize foreign vessels; agents of Department of Commerce and Labor may also search and seize vessels and make arrests; vessels, etc., seized, to be turned over to marshal; report to be made to district attorney.
258. Secretary of Commerce and Labor to make rules and regulations; may employ through the Secretary of the Treasury and the Secretary of the Navy vessels to enforce act; existing treaties, etc., not affected.

June 14, 1906.

34 Stat. L., 263.

Fishing in waters of, by aliens, except with rod, etc., prohibited.

34 Stat. L., 263.

SEC. 254. That it shall be unlawful for any person not a citizen of the United States, or who has declared his intention to become a citizen of the United States, and is not a bona fide resident therein, or for any company, corporation, or association not organized or authorized to transact business under the laws of the United States or under the laws of any State, Territory, or district thereof, or for any person not a native of Alaska, to catch or kill, or attempt to catch or kill, except with rod, spear, or gaff, any fish of any kind or species whatsoever in any of the waters of Alaska under the jurisdiction of the United States: *Provided, however*, That nothing contained in this act shall prevent those lawfully taking fish in the said waters from selling the same, fresh or cured, in Alaska or in Alaskan waters, to any alien person, company, or vessel, then being lawfully in said waters: *And provided further*, That nothing contained in this act shall prevent any person, firm, corporation, or association lawfully entitled to fish in the waters of Alaska from employing as laborers any aliens who can now be lawfully employed under the existing laws of the United States, either at stated wages or by piecework, or both, in connection with Alaskan fisheries, or with the canning, salting, or otherwise preserving of fish.

*Provisos.*
Sale of fish to aliens permitted.

Alien labor may be employed.

Ibid.

Penalty; fines made a lien upon vessels.

SEC. 255. That every person, company, corporation, or association found guilty of a violation of any provision of this act or of any regulation made thereunder shall, for each offense, be fined not less than one hundred dollars nor more than five hundred dollars, which fine shall be a lien against any vessel or other property of the offending party or which was used in the commission of such unlawful act. Every vessel used or employed in violation of any provision of this act or of any regulation made thereunder shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, and may be seized and proceeded against by way of libel in any court having jurisdiction of the offense.

Prosecution.

Ibid.

SEC. 256. That the violation of any provision of this act or of any regulation made thereunder may be prosecuted in any United States district court of Alaska, California, Oregon, or Washington.

Seizures and arrests.

Ibid.

SEC. 257. The collector of customs of the District of Alaska is hereby authorized to search and seize every foreign vessel and arrest every person violating any provision of this act or any regulation made thereunder, and the Secretary of Commerce and Labor shall have power to authorize officers of the Navy and of the Revenue-Cutter Service and agents of the Department of Commerce and Labor to likewise make such searches, seizures, and arrests. If any foreign vessel shall be found within the waters to which this act applies, having on board fresh or cured fish and apparatus or implements suitable for killing or taking fish, it shall be presumed that the vessel and appa-

Collector of customs may search and seize vessels; also agents of Department of Commerce and Labor may enforce act.

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ratus were used in violation of this act until it is otherwise sufficiently proved. And every vessel, its tackle, apparatus, or implements so seized shall be given into the custody of the United States marshal of either of the districts mentioned in section two hundred and fifty-six of this chapter, and shall be held by him subject to the proceedings provided for in section two hundred and fifty-five of this chapter. The facts in connection with such seizure shall be at once reported to the United States district attorney for the district to which the vessel so seized shall be taken, whose duty it shall be to institute the proper proceedings.

Enforcement of regulations.

SEC. 258. The Secretary of Commerce and Labor shall have power to make rules and regulations not inconsistent with law to carry into effect the provisions of this act. And it shall be the duty of the Secretary of Commerce and Labor to enforce the provisions of this act and the rules and regulations made thereunder, and for that purpose he may employ, through the Secretary of the Treasury and the Secretary of the Navy, the vessels of the United States Revenue-Cutter Service and of the Navy: *Provided, however*, That nothing contained in this act shall be construed as affecting any existing treaty or convention between the United States and any foreign power.

Ibid.

*Proviso.* Existing treaties, etc., not affected.

NOTE.—Wherever in this chapter the word "act" occurs, it refers to act June 14, 1906.

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# CHAPTER THREE.

## SALMON FISHERIES.

(For rules and regulations, apply to the Department of Commerce and Labor, Bureau of Fisheries.)


Sec.
259. Salmon, etc., canneries; license, etc., on products.
260. Private hatcheries; exemption for fry liberated; rate; inspection; approval; proof of amount liberated; statements to be filed; issue of certificates; acceptance for taxes; efficiency required.
261. Stationary obstructions for taking salmon in waters, unlawful.
262. Restriction on nets, seines, etc.
263. Weekly close season for taking salmon; night seining in small streams prohibited; release of obstructions, etc., during close season.
264. Spawning grounds to be set aside; close season authorized; notices required; not applicable to artificially stocked streams.
265. Canning prohibited 48 hours after killing.
266. Wanton waste of fish unlawful.
267. False branding prohibited; terms permitted.
268. Annual reports of fish establishments.
269. Provisions applicable to all species of fish.
270. Enforcement; officers authorized.
271. Punishment for violations; vessels, etc.
272. Prosecutions.
273. Inconsistent laws repealed.
274. Act to be in force from and after its passage.
275. Investigation into habits, etc., of salmon by Commissioner of Fish and Fisheries.
(NOTE.—For act providing protection of fur-bearing animals and salmon, see Chap. 12 of Criminal Code.)
275a. Inspectors authorized.


June 26, 1906.
34 Stat. L., 478.
Salmon, etc., canneries.

SEC. 259. That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, or in any of the waters of Alaska over which the United States has jurisdiction, shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer,

License tax on products.

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Collection. Vol. 30, p. 1336.

twenty cents per ton. The payment and collection of such license taxes shall be under and in accordance with the provisions of the act of March third, eighteen hundred and ninety-nine, entitled "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," and amendments thereto.

Private hatcheries. Exemption for fry liberated. Rate. Ibid.

SEC. 260. The catch and pack of salmon made in Alaska by the owners of private salmon hatcheries operated in Alaska shall be exempt from all license fees and taxation of every nature at the rate of ten cases of canned salmon to every one thousand red or king salmon fry liberated, upon the following conditions:

Inspection.

That the Secretary of Commerce and Labor may from time to time, and on the application of the hatchery owner shall, within a reasonable time thereafter, cause such private hatcheries to be inspected for the purpose of determining the character of their operations, efficiency, and productiveness, and if he approve the same shall cause

Approval.

notice of such approval to be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein any such hatchery is located, and shall also notify

Proof of amount liberated.

the owners of such hatchery of the action taken by him. The owner, agent, officer, or superintendent of any hatchery the effectiveness and productiveness of which has been approved as above provided shall, between the thirtieth day of June and the thirty-first day of December of each year, make proof of the number of salmon fry liberated during the twelve months immediately preceding the thirtieth day of June, by a written statement under oath. Such proof shall be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein such hatchery is located, and when so filed shall entitle the respective hatchery owners to the exemption as herein provided; and a false oath as to the number of salmon fry liberated shall be deemed perjury and subject the offender to all the pains and penalties thereof. Duplicates of such statements shall also be filed with the Secretary of Commerce and Labor.

Statements to be filed. Issue of certificates.

It shall be the duty of such clerk or deputy clerk in whose office the approval and proof heretofore provided for are filed to forthwith issue to the hatchery owner, causing such proofs to be filed, certificates which shall not be transferable and of such denominations as said owner may request (no certificate to cover fewer than one thousand fry), covering in the aggregate the number of fry so proved to have been liberated; and such certificates may be used at any time by the person, company, corporation, or association to whom issued for the payment pro tanto of any license fees or taxes upon or against or on account of any catch or pack of salmon made by them in Alaska; and it shall be the duty of all public officials charged with the duty of collecting or receiving such license fees or taxes to accept such certificates in lieu of money in payment of all license fees or taxes upon or against the pack of canned salmon at the ratio of one thousand fry for each ten cases of salmon. No hatchery owner shall obtain the rebates from the output of any hatchery to which he might otherwise be entitled under this act unless the efficiency of said hatchery has first been approved by the Secretary of Commerce and Labor in the manner herein provided for.

Acceptance for taxes.

Efficiency required.

Stationary obstructions for taking salmon in waters, unlawful. Ibid.

SEC. 261. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than five hundred feet, or within five hundred yards of the mouth of any red-salmon stream where the same is less than five hundred feet in width, with the purpose or result of capturing salmon or prevent-

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ing or impeding their ascent to their spawning grounds, and the Secretary of Commerce and Labor is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed.

Restriction on nets, seines, etc. Ibid.

SEC. 262. It shall be unlawful to lay or set any drift net, seine, set net, pound net, trap, or any other fishing appliance for any purpose except for purposes of fish culture, across or above the tide waters of any creek, stream, river, estuary, or lagoon, for a distance greater than one-third the width of such creek, stream, river, estuary, or lagoon, or within one hundred yards outside of the mouth of any red-salmon stream where the same is less than five hundred feet in width. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance.

Weekly close season for taking salmon. Ibid.

SEC. 263. It shall be unlawful to fish for, take, or kill any salmon of any species in any manner or by any means except by rod, spear, or gaff, in any of the waters of Alaska over which the United States has jurisdiction, except Cook Inlet, the Delta of Copper River, Bering Sea, and the waters tributary thereto, from six o'clock postmeridian of Saturday of each week until six o'clock antemeridian of the Monday following, or to fish for, or catch, or kill in any manner or by any appliances except by rod, spear, or gaff, any salmon in any stream of less than one hundred yards in width in Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week. Throughout the weekly close season herein prescribed the gate, mouth, or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the "heart" of such traps on each side next to the "pot" shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

Night seining in small streams prohibited.

Release of obstructions, etc., during close season.

Ibid. Spawning grounds to be set aside.

SEC. 264. The Secretary of Commerce and Labor may, in his discretion, set aside any streams or lakes as preserves for spawning grounds, in which fishing may be limited or entirely prohibited; and when, in his judgment, the results of fishing operations in any stream, or off the mouth thereof, indicate that the number of salmon taken is larger than the natural production of salmon in such stream, he is authorized to establish close seasons or to limit or prohibit fishing entirely for one year or more within such stream or within five hundred yards of the mouth thereof, so as to permit salmon to increase: *Provided, however*, That such power shall be exercised only after all persons interested shall be given a hearing, of which due notice must be given by publication; and where the interested parties are known to the department they shall be personally notified by a notice mailed not less than thirty days previous to such hearing. No order made under this section shall be effective before the next calendar year after same is made: *And provided further*, That such limitations and prohibitions shall not apply to those engaged in catching salmon who keep such streams fully stocked with salmon by artificial propagation.

Close season authorized.

*Provisos.* Notices required.

Not applicable to artificially stocked streams.

Ibid. Canning prohibited 48 hours after killing.

SEC. 265. It shall be unlawful to can or salt for sale for food any salmon more than forty-eight hours after it has been killed.

Ibid. Wanton waste of fish unlawful.

SEC. 266. That it shall be unlawful for any person, company, or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of Alaska.

Ibid. False branding prohibited.

SEC. 267. That it shall be unlawful for any person, company, or corporation canning, salting, or curing fish of any species in Alaska to use any label, brand, or trade-mark which shall tend to misrepresent the contents of any package of fish offered for sale: *Provided*, That the use of the terms "red," "medium red," "pink," "chum,"

*Proviso.* Terms permitted.

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and so forth, as applied to the various species of Pacific salmon under present trade usages shall not be deemed in conflict with the provisions of this act when used to designate salmon of those known species.

Ibid.
Annual reports of fish establishments.

SEC. 268. That every person, company, and corporation engaged in catching, curing, or in any manner utilizing fishery products, or in operating fish hatcheries in Alaska, shall make detailed annual reports thereof to the Secretary of Commerce and Labor, on blanks furnished by him, covering all such facts as may be required with respect thereto for the information of the department. Such reports shall be sworn to by the superintendent, manager, or other person having knowledge of the facts, a separate blank form being used for each establishment in cases where more than one cannery, saltery, or other establishment is conducted by a person, company, or corporation, and the same shall be forwarded to the department at the close of the fishing season and not later than December fifteenth of each year.

Ibid.
Provisions applicable to all species of fish.

SEC. 269. That the catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this act, and the Secretary of Commerce and Labor is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this act.

Ibid.
Enforcement.

SEC. 270. That to enforce the provisions of this act and such regulations as he may establish in pursuance thereof, the Secretary of Commerce and Labor is authorized and directed to depute, in addition to the agent and assistant agent of salmon fisheries now provided by law, from the officers and employees of the Department of Commerce and Labor, a force adequate to the performance of all work required for the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and he shall annually submit to Congress estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of such officials, and for such other expenditures as may be necessary to carry out the provisions of this act.

Officers authorized.

Punishment for violations.

SEC. 271. That any person, company, corporation, or association violating any provision of this act or any regulation established in pursuance thereof shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court; and in case of the violation of any of the provisions of section two hundred and sixty-two of this chapter and conviction thereof a further fine of not more than two hundred and fifty dollars per diem may, at the discretion of the court, be imposed for each day such obstruction is maintained. And every vessel or other apparatus or equipment used or employed in violation of any provision of this act, or of any regulation made thereunder, may be seized by order of the Secretary of Commerce and Labor, and shall be held subject to the payment of such fine or fines as may be imposed.

Ibid.

Vessels, etc.

Prosecutions.

SEC. 272. That the violation of any provision of this act may be prosecuted in any district court of Alaska or any district court of the United States in the States of California, Oregon, or Washington.

Ibid.

And it shall be the duty of the Secretary of Commerce and Labor to enforce the provisions of this act and the rules and regulations made thereunder. And it shall be the duty of the district attorney to whom any violation is reported by any agent or representative of the Department of Commerce and Labor to institute proceedings necessary to carry out the provisions of this act.

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SEC. 273. That all acts or parts of acts inconsistent with the provisions of this act are, so far as inconsistent, hereby repealed. Inconsistent laws repealed. Ibid.

SEC. 274. That this act shall take effect and be in force from and after its passage. Effect. Ibid.

NOTE.—Whenever in this chapter the word act occurs, it refers to act of June 26, 1906, and this act amends the act of June 9, 1896.

Sutter *v.* Heckman, 1 Alaska Rep., 188; Heckman *v.* Sutter, 128 Fed. Rep., 393, 63 C. C. A., 135; 2 Alaska Rep., 732; Russian American Pack Co. *v.* U. S., 199 U. S., 570; 2 Alaska Rep., 735; The Royal Pack Co. *v.* U. S., 199 U. S., 570; 2 Alaska Rep., 735.

*Related subjects:* State *v.* Nielsen, 95 Pac. Rep., 720; State *v.* Hume, 95 Pac. Rep., 809.

As to appropriations for the protection of salmon fisheries, hatcheries, salaries, and contingent expenses, see the following acts: 30 Stat. L., 29, 112, 616, 1093; 31 Stat. L., 610, 1155; 32 Stat. L., 450, 1111; 33 Stat. L., 36, 478, 1181; 34 Stat. L., 721, 1329; 35 Stat. L., 322, 342, 343; 36 Stat. L., 763.

SEC. 275. The Commissioner of Fish and Fisheries is hereby empowered and directed to institute an investigation into the habits, abundance, and distribution of the salmon of Alaska, as well as the present conditions and methods of the fisheries, with a view of recommending to Congress such additional legislation as may be necessary to prevent the impairment or exhaustion of these valuable fisheries, and placing them under regular and permanent conditions of production. Mar. 2, 1889. 25 Stat. L., 1009. Investigation into habits, etc., of salmon.

Charlton Code, p. 31, sec. 2.

SEC. 275a. That to enforce the provisions of law herein, and such regulations as the Secretary of the Treasury may establish in pursuance thereof, he is authorized and directed to appoint one inspector of fisheries, at a salary of one thousand eight hundred dollars per annum, and two assistant inspectors, at a salary of one thousand six hundred dollars each per annum, and he will annually submit to Congress estimates to cover the salaries and actual traveling expenses of the officers hereby authorized and for such other expenditures as may be necessary to carry out the provisions of the law herein. June 9, 1896. 29 Stat. L., 317. Inspectors authorized.

Charlton Code, p. 50, sec. 4.

See also sections 2059–2063, Criminal Code, being sections 179–183, chap. 12, of the Charlton Code of 1905.

By act of June 4, 1897, chap. 2, 30th Stat. L., 29, 2d Supp., R. S., 622, an agent and an assistant agent were substituted for inspectors.

### HISTORY OF LAWS PROTECTING SALMON FISHERIES.

This is an act to provide for the protection of salmon fisheries of Alaska, consisting of three sections. It prohibits the erection of dams impeding the ascent of fish, and provides for punishment. It also provides that the Commissioner of Fish and Fisheries shall institute an investigation into the habits, abundance, and distribution of salmon of Alaska. Mar. 2, 1889. 25 Stat. L., 1009. R. S., 1st Supp., p. 701.

Section 1 provides that the act approved March 2, 1889, and entitled "An act to provide for the protection of salmon fisheries of Alaska," is hereby amended and reenacted as follows: "This act consists of five sections, prohibits the erection of dams or other obstruction preventing the ascent of salmon, fishing prohibited above tidewaters except with rod and spear. It also provides for spawning grounds, close seasons, hatcheries, inspectors, and punishment for violation." This act would seem to repeal the act of March 2, 1889. (The foregoing section also provides that there shall be total prohibition Saturdays, and no fishing at night except by rod or spear.) June 9, 1896. 29 Stat. L., 316. R. S., 2d Supp., p. 510.

That in lieu of the three inspectors whose employment is authorized by the act of June 9, 1896, there shall be appointed by the President, by and with the advice and consent of the Senate, one agent at a salary of $2,500 per annum, one assistant agent at a salary of $2,000 per annum. June 4, 1897. 30 Stat. L., 29.

For the establishment of one or more fish hatcheries in Alaska for the propagation of salmon and other food fishes at points to be selected by the Secretary of Commerce and Labor, including purchase of sites, the construction of necessary buildings and ponds, purchase and hire of boats and equipment, and such temporary help as may be required for construction and operation of the hatcheries—to be immediately available, $50,000. Mar. 3, 1905. 33 Stat. L., 1181.

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June 26, 1906.
34 Stat. L., 478.
Ibid., sec. 1. While this act in its enacting clause does not purport to amend act of 1896, yet it provides by sec. 15 that all acts or parts of acts inconsistent with the provisions of this act, so far as inconsistent, are hereby repealed.

Provides that persons and companies engaged in canning, etc., fish, shall in lieu of all other taxes pay license taxes as follows: Canned salmon, 4 cents a case, etc.

Ibid., sec. 2. Provides that owners of private hatcheries shall be exempt from all license taxes at rate of ten cases of canned salmon to every one thousand red or King salmon liberated. Provides for inspection, etc.

Ibid., sec. 3. Stationary obstruction for taking salmon, unlawful.

Ibid., sec. 4. Restriction on nets, seines, etc.

Ibid., sec. 5. Weekly closed season.

Ibid., sec. 6. Spawning grounds to be set aside; close season authorized.

Ibid., sec. 7. Canning prohibited forty-eight hours after killing.

Ibid., sec. 8. Wanton waste prohibited.

Ibid., sec. 9. False branding prohibited.

NOTE.—Yes Bay Reservation, Feb. 1, 1906, for salmon reservation.

# CHAPTER FOUR.

## SEAL FISHERIES.


Sec.
276. Killing, etc., in Pacific Ocean prohibited.
277. Equipment, etc., of vessels.
278. Natives not included; proviso.
279. Importation of skins prohibited.
280. Enforcement of regulations by President.
281. Punishment for violations; penalty.
282. Presumption of violation of act.
283. Jurisdiction of courts.
284. Searching of suspected vessels.
285. Seizure of suspected vessels.
286. Killing on Pribilof Islands prohibited; natives excluded; provisos.
287. Definition of pelagic sealing.
288. Effect and duration of act.
Treaty between United States and Great Britain providing for the preservation and protection of fur seals.
289. Secretary of Commerce and Labor to make regulations for killing, etc., seals; restricted to officials, etc.; limit.
290. Sales, subject to future treaties.
291. Employment of Pribilof natives; compensation.
292. Killing seals and other fur-bearing animals forbidden; punishment; permission by Secretary of Commerce and Labor; prevention of illegal killing.
292a. Price for fox skins.
293. Pribilof Islands made a special reservation; landing, etc., on, unlawful; punishment.

Sec.
294. Restriction on killing female or young seals; punishment.
295. Additional officers, etc., authorized; purchase of right of present lessee, etc.; maintenance of depots, etc.; food to natives.
296. Laws repealed, R. S., secs. 1962 to 1972; effect; appropriation. (See note for provisions of sections repealed.)
297. Agents' salaries fixed, and appropriation for expenses and food for natives.
298. Appropriation for protection of seal and salmon fisheries.
299. Agents shall not be financially interested.
300. Agents are empowered to administer oaths.
NOTE.—Secs. 1973 and 1974, R. S., repealed by implication.
301. Extension of protection to North Pacific Ocean; treaties, prosecution of violation.
302. Governor to inquire into operations of Alaska Seal & Fur Co. and annually report to Congress.
303. Governor to inquire into seal-killing operations; report of governor.
304. Investigation as to seal life in Pribilof Islands; inquiry relative to fur seals of Bering Sea.
NOTE.—History of treaties and legislation pertaining to seal fisheries.


Aug. 24, 1912.
37 Stat. L., 499.
Killing, etc., in Pacific Ocean prohibited.

SEC. 276. That no citizen of the United States, nor person owing duty of obedience to the laws or the treaties of the United States, nor any of their vessels, nor any vessel of the United States, nor any person belonging to or on board of such vessel, shall kill, capture, or pursue, at any time or in any manner whatever, any fur seal in the waters of the north Pacific Ocean north of the thirtieth parallel of north latitude and including the seas of Bering, Kamchatka, Okhotsk,

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and Japan; nor shall any such person or vessel kill, capture, or pursue sea otter in any of the waters mentioned beyond the distance of three miles from the shore line of the territory of the United States.

Amends act of Apr. 21, 1910.
36 Stat. L., 327.

NOTE.—Act of April 21, 1910, 36 Stat. L., 327, and act of December 29, 1897, 30 Stat. L., 226, are amended by above act of August 24, 1912.
For treaty and convention, see infra under sec. 288.

Ibid.

SEC. 277. That no citizen of the United States, nor person above described in section two hundred and seventy-six, shall equip, use, or employ, or furnish aid in equipping, using, or employing, or furnish supplies to any vessel used or employed, or to be used or employed, in carrying on or taking part in pelagic sealing or in sea-otter hunting in said waters, nor shall any of their vessels nor any vessel of the United States be so used or employed; and no person or vessel shall use any of the ports or harbors of the United States, or any part of the territory of the United States, for any purpose whatsoever connected with the operations of pelagic sealing or sea-otter hunting in the waters named in section two hundred and seventy-six of this act; and no vessel which is engaged or employed, or intended to be engaged or employed, for or in connection with pelagic sealing or sea-otter hunting in such waters shall use any of the ports or harbors or any part of the territory of the United States for any purpose whatsoever.

Equipments, etc., of vessels.

Amends Act of Dec. 29, 1897.
30 Stat. L., 226.

Ibid.

SEC. 278. That the provisions of sections two hundred and seventy-six and two hundred and seventy-seven of this act shall not apply to Indians, Aleuts, or other aborigines dwelling on the American coast of the waters mentioned in section two hundred and seventy-six of this act who carry on pelagic sealing in canoes or undecked boats propelled wholly by paddles, oars, or sails, and not transported by or used in connection with other vessels, and manned by not more than five persons each, in the way hitherto practiced by the said Indians, Aleuts, or other aborigines, and without the use of firearms: *Provided, however*, That the exception made in this section shall not apply to Indians, Aleuts, or other aborigines in the employment of other persons, or who shall kill, capture, or pursue fur seals or sea otters under contract to deliver the skins to any person.

Natives not included.

*Proviso.*

Ibid.

SEC. 279. That the importation or bringing into territory of the United States, by any person whatsoever, of skins of fur seals or sea otters taken in the waters mentioned in section two hundred and seventy-six of this act, or of skins identified as those of the species known as Callorhinus alascanus, Callorhinus ursinus, and Callorhinus kurilensis, or belonging to the American, Russian, or Japanese herds, whether raw, dressed, dyed, or manufactured, except such as have been taken under the authority of the respective parties to said convention, to which the breeding grounds of such herds belong, and have been officially marked and certified as having been so taken, is hereby prohibited; and all such articles imported or brought in after this act shall take effect shall not be permitted to be exported, but shall be seized and forfeited to the United States.

Importation of skins prohibited.

Ibid.

SEC. 280. That the President shall have power to make regulations to carry this act and the said convention into effect, and from time to time to add to, modify, amend, or revoke such regulations, as in his judgment may seem expedient. It shall be the duty of the Secretary of Commerce and Labor, under the direction of the President, to see that the said convention, the provisions of this act, and the regulations made thereunder are executed and enforced; and all officers of the United States engaged in the execution and enforcement of this act are authorized and directed to cooperate with the proper officers of any of the other parties to the said convention in taking such measures as may be appropriate and available under the said convention, this act, or the regulations made thereunder for the purpose of preventing pelagic sealing as in this act prohibited.

Enforcement of regulations by President.

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Ibid.

SEC. 281. That every person guilty of a violation of any of the provisions of said convention, or of this act, or of any regulation made thereunder, shall, for each offense, be fined not less than two hundred dollars or more than two thousand dollars, or imprisoned not more than six months, or both; and every vessel, its tackle, apparel, furniture, and cargo, at any time used or employed in violation of this act, or of the regulations made thereunder, shall be forfeited to the United States.

Penalty.

Ibid.

SEC. 282. That if any vessel shall be found within the waters to which this act applies, having on board fur-seal skins or sea-otter skins, or bodies of seals or sea otters, or apparatus or implements for killing or taking seals or sea otter, it shall be presumed that such vessel was used or employed in the kiling of said seals or sea otters, or that said apparatus or implements were used in violation of this act, until the contrary is proved to the satisfaction of the court, in so far as such vessel, apparatus, and implements are subject to the jurisdiction of the United States.

Presumption of violation of act.

Ibid.

SEC. 283. That any violation of the said convention, or of this act, or of the regulations thereunder, may be prosecuted either in the district court of Alaska, or in any district court of the United States in California, Oregon, or Washington.

Jurisdiction of courts.

Ibid.

SEC. 284. That it shall be the duty of the President to cause a guard or patrol to be maintained in the waters frequented by the seal herd or herds and sea otter, in the protection of which the United States is especially interested, composed of naval or other public vessels of the United States designated by him for such service; and any officer of any such vessel engaged in such service and any other officers duly designated by the President may search any vessel of the United States, in port, or in territorial waters of the United States, or on the high seas, when suspected of having violated, or being about to violate, the provisions of said convention, or of this act, or of any regulation made thereunder, and may seize such vessel and the officers and crew thereof and bring them into the most accessible port of the Territory or of any of the States mentioned in section two hundred and eighty-three of this act for trial.

Searching of suspected vessels.

Ibid.

SEC. 285. That any vessel or person described in section two hundred and seventy-six of this act offending or being about to offend against the prohibitions of the said convention, or of this act, or of the regulations made thereunder, may be seized and detained by the naval or other duly commissioned officers of any of the parties to the said convention other than the United States, except within the territorial jurisdiction of one of the other of said parties, on condition, however, that when such vessel or person is so seized and detained by officers of any party other than the United States such vessel or person shall be delivered as soon as practicable at the nearest point to the place of seizure, with the witnesses and proofs necessary to establish the offense so far as they are under the control of such party, to the proper official of the United States, whose courts alone shall have jurisdiction to try the offense and impose the penalties for the same: *Provided, however*, That the said officers of any party to said convention other than the United States shall arrest and detain vessels and persons, as in this section specified, only after such party, by appropriate legislation or otherwise, shall have authorized the naval or other officers of the United States duly commissioned and instructed by the President to that end to arrest, detain, and deliver to the proper officers of such party vessels and subjects under the jurisdiction of that Government offending against said convention or any statute or regulation made by that Government to enforce said convention. The President of the United States shall deter-

Seizure of suspected vessels.

*Proviso.*

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mine by proclamation when such authority has been given by the other parties to said convention, and his determination shall be conclusive upon the question; and such proclamation may be modified, amended, or revoked by proclamation of the President whenever, in his judgment it is deemed expedient.

Ibid. Killing on Pribilof Islands prohibited.

SEC. 286. That from and after the approval of this act all killing of fur seals on the Pribilof Islands, or anywhere within the jurisdiction of the United States in Alaska, shall be suspended for a period of five years, and shall be, and is hereby, declared to be unlawful; and all punishments and penalties heretofore enacted for the illegal killing of fur seals shall be applicable and inflicted upon offenders under this section: *Provided*, That this prohibition shall not apply to the annual killing on the Pribilof Islands of such male seals as are needed to supply food, clothing, and boat skins for the natives on the islands, as is provided for in article eleven of said convention; the skins of all seals so used for food shall be preserved and annually sold by the Government, and proceeds of such annual sales shall be covered into the Treasury of the United States: *Provided further*, That at the expiration of the said five years' suspension of all commercial killing as above provided, said killing may be resumed under authority of the Secretary of Commerce and Labor: *Provided, however*, That the number of three-year-old males selected from among the finest and most perfect seals of that age found on the hauling grounds, to be reserved for breeding purposes, in each year ending August first, shall not be fewer than the following: In nineteen hundred and seventeen, and in each year thereafter until nineteen hundred and twenty-six, inclusive, five thousand. The Secretary of Commerce and Labor, or his authorized agents, shall have authority to receive on behalf of the United States any and all fur-seal skins taken as provided in the thirteenth and fourteenth articles of said convention and tendered for delivery by the Governments of Japan and Great Britain in accordance with the terms of said articles; and all skins which are or shall become the property of the United States from any source whatsoever shall be sold by the Secretary of Commerce and Labor in such market, at such times, and in such manner as he may deem most advantageous; and the proceeds of such sale or sales shall be paid into the Treasury of the United States. The Secretary of Commerce and Labor shall likewise have authority to deliver to the authorized agents of the Canadian Government and the Japanese Government the skins to which they are entitled under the provisions of the tenth article of said convention; to pay to Great Britain and Japan such sums as they are entitled to receive, respectively, under the provisions of the eleventh article of said convention; to retain such skins as the United States may be entitled to retain under the provisions of the eleventh article of said convention; and to do or perform, or cause to be done or performed, any and every act which the United States is authorized or obliged to do or perform by the provisions of the tenth, eleventh, thirteenth, and fourteenth articles of said convention; and to enable the Secretary of Commerce and Labor to carry out the provisions of the said eleventh article there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of four hundred thousand dollars.

Natives excluded.

Amends act of Apr. 21, 1910. 36 Stat. L., 327.

Proviso.

Proviso.

Ibid. Definition of pelagic sealing.

SEC. 287. That the term "pelagic sealing" where used in this act shall be taken to mean the killing, capturing, or pursuing in any manner whatsoever of fur seals while the same are in the water. The word "person" where used in this act shall extend and be applied to partnerships and corporations.

Ibid. Effect and duration.

SEC. 288. That this act shall take effect immediately, and shall continue in force until the termination of the said convention.

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## TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN PROVIDING FOR THE PRESERVATION AND PROTECTION OF FUR SEALS.

Signed at Washington February 7, 1911.
Ratification advised by the Senate, February 15, 1911.
Ratified by the President, March 6, 1911.
Ratified by Great Britain, April 20, 1911.
Ratifications exchanged at Washington July 7, 1911.
Proclaimed, December 14, 1911.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

### A PROCLAMATION.

WHEREAS a Treaty between the United States of America and the United Kingdom of Great Britain and Ireland providing for the preservation and protection of fur seals, was concluded and signed by their respective Plenipotentiaries at Washington on the seventh day of February, one thousand nine hundred and eleven, the original of which Treaty is word for word as follows:

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of adopting effective measures for the preservation and protection of the fur seals, have resolved to conclude a treaty for that purpose and to that end have named as their Plenipotentiaries:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States; and

His Britannic Majesty, the Right Hon. James Bryce, O. M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

#### ARTICLE I.

The High Contracting Parties mutually and reciprocally agree that their citizens and subjects, respectively, and all persons subject to their laws and treaties, and their vessels shall be prohibited while this Article remains in force from engaging in pelagic sealing in that part of the Behring Sea and North Pacific Ocean north of the thirty-fifth degree of north latitude and east of the one hundred and eightieth meridian, and that every such person or vessel offending against this prohibition may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be delivered as soon as practicable to the authorities of the nation to which they respectively belong, who alone shall have jurisdiction to try the offense and impose the penalties for the same, the witnesses and proof necessary to establish the offense being also sent with them, or otherwise furnished to the proper jurisdictional authority with all reasonable promptitude; and they agree, further, respectively, to prohibit during the same period the use of any United States or British port by any persons for any purposes whatsoever connected with the operations of pelagic sealing in said waters, and to prohibit during the same period the importation or bringing of any fur-seal skins taken in such pelagic sealing into any United States or British port, and by the necessary legislation and enforcement of appropriate penalties thereunder to make such prohibitions effective.

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Such prohibitions, however, shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain and carrying on pelagic sealing in canoes not transported by or used in connection with other vessels, and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each, in the way hitherto practiced by the Indians, without the use of firearms, provided such Indians are not in the employment of other persons, nor under contract for the delivery of the skins to any person.

ARTICLE II.

The United States agrees that one-fifth ($\frac{1}{5}$) in number and in value of the total number of sealskins taken annually upon the Pribilof Islands, or any other islands or shores of the waters above defined, subject to the jurisdiction of the United States, to which the seal herd now frequenting the Pribilof Islands hereafter resorts, shall be delivered at the end of each season to an authorized agent of the Canadian Government in the Pribilof Islands: *Provided, however*, That nothing herein contained shall restrict the right of the United States at any time and from time to time to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose such restrictions and regulations upon the total number of skins to be taken in any season and the manner and times and places of taking them as may seem necessary to protect and preserve the seal herd or to increase its numbers.

ARTICLE III.

It is further agreed that as soon as this Article goes into effect the United States shall pay to Great Britain the sum of two hundred thousand dollars ($200,000) as an advance payment in lieu of such number of fur-seal skins, to which Great Britain would be entitled under the provisions of this treaty, as would be equivalent to that amount reckoned at their market value at London at the date of delivery, before dressing or curing and less cost of transportation from the Pribilof Islands; such market value in case of dispute to be determined by an umpire to be agreed upon by the High Contracting Parties, which skins shall be retained by the United States in satisfaction of such payment.

The United States further agrees that Great Britain's share of the sealskins taken on the Pribilof Islands shall not be less than one thousand (1,000) in any year, even if such number is more than one-fifth of the number to which the authorized killing is restricted in such year, unless the killing of seals in such year or years shall have been absolutely prohibited by the United States for all purposes except to supply food, clothing, and boat skins for the natives on the islands, in which case the United States agrees to pay to Great Britain the sum of ten thousand dollars ($10,000) annually in lieu of any share of skins during the years when no killing is allowed, and Great Britain agrees that after deducting the skins of Great Britain's share which are to be retained by the United States as above provided to reimburse itself for the advance payment aforesaid, the United States shall be entitled to reimburse itself for any annual payments made as herein required, by retaining an additional number of sealskins from Great Britain's share over and above the specified minimum allowance of one thousand (1,000) skins in any subsequent year or years when killing is again resumed, until the whole number of the skins so retained shall equal, reckoned at their market value determined as above provided for, the entire amount so paid, with interest at the rate of four (4) per cent per annum.

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If, however, the total number of seals frequenting the Pribilof Islands in any year falls below one hundred thousand (100,000), enumerated by official count, then all killing, excepting the inconsiderable supply necessary for the support of the natives, as above noted, may be suspended without allowance of skins or payment of money equivalent until the number of such seals again exceeds one hundred thousand (100,000), enumerated in like manner.

ARTICLE IV.

The term "pelagic sealing," as used herein, is defined to be the killing, capturing, or pursuing in any manner whatsoever of fur seals at sea, outside territorial waters.

ARTICLE V.

The High Contracting Parties agree that they will each maintain a guard or patrol in the waters of the North Pacific Ocean and Behring Sea so far as may be necessary for the enforcement of the aforesaid prohibitions.

ARTICLE VI.

The foregoing Articles shall go into effect as soon as, but not before, an international agreement is concluded and ratified by the Governments of the United States, Great Britain, Japan, and Russia, by which each of those powers shall undertake, by such stipulations as may be mutually acceptable, to prohibit for a period of not less than fifteen years, its own citizens or subjects, and all persons subject to its laws and treaties, from engaging in pelagic sealing in waters including the area defined in Article I, and effectively to enforce such prohibition.

The foregoing Articles of this treaty shall continue in force during the period of fifteen (15) years from the day on which they go into effect and thereafter until terminated by twelve (12) months' written notice given by either the United States or Great Britain to the other, which notice may be given at the expiration of fourteen years or at any time afterwards.

ARTICLE VII.

The High Contracting Parties engage to cooperate with each other in urging other powers whose subjects or citizens may be concerned in the fur-seal fisheries to forego, in virtue of appropriate arrangements, the exercise of the right of pelagic sealing, and also to prohibit the use of their ports and flag in the furtherance of pelagic sealing within the areas covered by such arrangement.

ARTICLE VIII.

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and ratifications shall be exchanged in Washington as soon as practicable..

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the seventh day of February, in the year of our Lord one thousand nine hundred and eleven.

PHILANDER C KNOX [SEAL.]
JAMES BRYCE [SEAL.]

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AND WHEREAS the said Treaty has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the seventh day of July, one thousand nine hundred and eleven;

NOW, THEREFORE, be it known that I, WILLIAM HOWARD TAFT, President of the United States of America, have caused said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fourteenth day of December in the year of our Lord one thousand nine hundred and [SEAL] eleven, and of the Independence of the United States of America the one hundred and thirty-sixth.

WM H TAFT

By the President:
P C KNOX
*Secretary of State.*

## CONVENTION BETWEEN THE UNITED STATES AND OTHER POWERS PROVIDING FOR THE PRESERVATION AND PROTECTION OF FUR SEALS.

Signed at Washington, July 7, 1911.
Ratification advised by the Senate, July 24, 1911.
Ratified by the President, November 24, 1911.
Ratified by Great Britain, August 25, 1911.
Ratified by Japan, November 6, 1911.
Ratified by Russia, October 22, 1911, November 4, 1911.
Ratifications Exchanged at Washington, December 12, 1911.
Proclaimed, December 14, 1911.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America, Great Britain, Japan and Russia providing for the preservation and protection of the fur seals which frequent the waters of the North Pacific Ocean, was concluded and signed by their respective Plenipotentiaries at Washington, on the 7th day of July, one thousand nine hundred and eleven, the original of which Convention, being in the English language, is word for word as follows:

The United States of America, His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, His Majesty the Emperor of Japan, and His Majesty the Emperor of all the Russias, being desirous of adopting effective means for the preservation and protection of the fur seals which frequent the waters of the North Pacific Ocean, have resolved to conclude a Convention for the purpose, and to that end have named as their Plenipotentiaries:

The President of the United States of America, the Honorable Charles Nagel, Secretary of Commerce and Labor of the United States, and the Honorable Chandler P. Anderson, Counselor of the Department of State of the United States;

His Britannic Majesty, the Right Honorable James Bryce, of the Order of Merit, his Ambassador Extraordinary and Plenipotentiary



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at Washington, and Joseph Pope, Esquire, Commander of the Royal Victorian Order and Companion of the Order of St. Michael and St. George, Under Secretary of State of Canada for External Affairs;

His Majesty the Emperor of Japan, Baron Yasuya Uchida, Jusammi, Grand Cordon of the Imperial Order of the Rising Sun, his Ambassador Extraordinary and Plenipotentiary at Washington; and the Honorable Hitoshi Daukó, Shoshii, Third Class of the Imperial Order of the Rising Sun, Director of the Bureau of Fisheries, Department of Agriculture and Commerce;

His Majesty the Emperor of all the Russias, the Honorable Pierre Botkine, Chamberlain of His Majesty's Court, Envoy Extraordinary and Minister Plenipotentiary to Morocco, and Baron Boris Nolde, of the Foreign Office;

Who, after having communicated to one another their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

ARTICLE I.

The High Contracting Parties mutually and reciprocally agree that their citizens and subjects respectively, and all persons subject to their laws and treaties, and their vessels, shall be prohibited, while this Convention remains in force, from engaging in pelagic sealing in the waters of the North Pacific Ocean, north of the thirtieth parallel of north latitude and including the Seas of Bering, Kamchatka, Okhotsk and Japan, and that every such person and vessel offending against such prohibition may be seized, except within the territorial jurisdiction of one of the other Powers, and detained by the naval or other duly commissioned officers of any of the Parties to this Convention, to be delivered as soon as practicable to an authorized official of their own nation at the nearest point to the place of seizure, or elsewhere as may be mutually agreed upon; and that the authorities of the nation to which such person or vessel belongs alone shall have jurisdiction to try the offense and impose the penalties for the same; and that the witnesses and proofs necessary to establish the offense, so far as they are under the control of any of the Parties to this Convention, shall also be furnished with all reasonable promptitude to the proper authorities having jurisdiction to try the offense.

ARTICLE II.

Each of the High Contracting Parties further agrees that no person or vessel shall be permitted to use any of its ports or harbors or any part of its territory for any purposes whatsoever connected with the operations of pelagic sealing in the waters within the protected area mentioned in Article I.

ARTICLE III.

Each of the High Contracting Parties further agrees that no sealskins taken in the waters of the North Pacific Ocean within the protected area mentioned in Article I, and no sealskins identified as the species known as *Callorhinus alascanus*, *Callorhinus ursinus*, and *Callorhinus kurilensis*, and belonging to the American, Russian or Japanese herds, except such as are taken under the authority of the respective Powers to which the breeding grounds of such herds belong and have been officially marked and certified as having been so taken, shall be permitted to be imported or brought into the territory of any of the Parties to this Convention.

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ARTICLE IV.

It is further agreed that the provisions of this Convention shall not apply to Indians, Ainos, Aleuts, or other aborigines dwelling on the coast of the waters mentioned in Article I, who carry on pelagic sealing in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms; provided that such aborigines are not in the employment of other persons or under contract to deliver the skins to any person.

ARTICLE V.

Each of the High Contracting Parties agrees that it will not permit its citizens or subjects or their vessels to kill, capture or pursue beyond the distance of three miles from the shore line of its territories sea otters in any part of the waters mentioned in Article I of this Convention.

ARTICLE VI.

Each of the High Contracting Parties agrees to enact and enforce such legislation as may be necessary to make effective the foregoing provisions with appropriate penalties for violations thereof.

ARTICLE VII.

It is agreed on the part of the United States, Japan, and Russia that each respectively will maintain a guard or patrol in the waters frequented by the seal herd in the protection of which it is especially interested, so far as may be necessary for the enforcement of the foregoing provisions.

ARTICLE VIII.

All of the High Contracting Parties agree to cooperate with each other in taking such measures as may be appropriate and available for the purpose of preventing pelagic sealing in the prohibited area mentioned in Article I.

ARTICLE IX.

The term pelagic sealing is hereby defined for the purposes of this Convention as meaning the killing, capturing or pursuing in any manner whatsoever of fur seals at sea.

ARTICLE X.

The United States agrees that of the total number of sealskins taken annually under the authority of the United States upon the Pribilof Islands or any other islands or shores of the waters mentioned in Article I subject to the jurisdiction of the United States to which any seal herds hereafter resort, there shall be delivered at the Pribilof Islands at the end of each season fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Canadian Government and fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Japanese Government; provided, however, that nothing herein contained shall restrict the right of the United States at any time and from time to time to

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suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose such restrictions and regulations upon the total number of skins to be taken in any season and the manner and times and places of taking them as may seem necessary to protect and preserve the seal herd or to increase its number.

ARTICLE XI.

The United States further agrees to pay the sum of two hundred thousand dollars ($200,000) to Great Britain and the sum of two hundred thousand dollars ($200,000) to Japan when this Convention goes into effect, as an advance payment in each case in lieu of such number of fur-seal skins to which Great Britain and Japan respectively would be entitled under the provisions of this Convention as would be equivalent in each case to two hundred thousand dollars ($200,000) reckoned at their market value at London at the date of their delivery before dressing and curing and less cost of transportation from the Pribilof Islands, such market value in case of dispute to be determined by an umpire to be agreed upon by the United States and Great Britain, or by the United States and Japan, as the case may be, which skins shall be retained by the United States in satisfaction of such payments.

The United States further agrees that the British and Japanese share respectively of the sealskins taken from the American herd under the terms of this Convention shall be not less than one thousand (1,000) each in any year even if such number is more than fifteen per cent (15%) of the number to which the authorized killing is restricted in such year, unless the killing of seals in such year or years shall have been absolutely prohibited by the United States for all purposes except to supply food, clothing, and boat skins for the natives on the islands, in which case the United States agrees to pay to Great Britain and to Japan each the sum of ten thousand dollars ($10,000) annually in lieu of any share of skins during the years when no killing is allowed; and Great Britain agrees, and Japan agrees, that after deducting the skins of their respective shares, which are to be retained by the United States as above provided to reimburse itself for the advance payment aforesaid, the United States shall be entitled to reimburse itself for any annual payments made as herein required, by retaining an additional number of sealskins from the British and Japanese shares respectively over and above the specified minimum allowance of one thousand (1,000) skins in any subsequent year or years when killing is again resumed, until the whole number of skins retained shall equal, reckoned at their market value determined as above provided for, the entire amount so paid, with interest at the rate of four per cent (4%) per annum.

If, however, the total number of seals frequenting the United States islands in any year falls below one hundred thousand (100,000), enumerated by official count, then all killing, excepting the inconsiderable supply necessary for the support of the natives as above noted, may be suspended without allowance of skins or payment of money equivalent until the number of such seals again exceeds one hundred thousand (100,000), enumerated in like manner.

ARTICLE XII.

It is agreed on the part of Russia that of the total number of sealskins taken annually upon the Commander Islands, or any other islands or shores of the waters defined in Article I subject to the jurisdiction of Russia to which any seal herds hereafter resort, there shall

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be delivered at the Commander Islands at the end of each season fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Canadian Government, and fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Japanese Government; provided, however, that nothing herein contained shall restrict the right of Russia at any time and from time to time during the first five years of the term of this Convention to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose during the term of this Convention such restrictions and regulations upon the total number of skins to be taken in any season, and the manner and times and places of taking them as may seem necessary to preserve and protect the Russian seal herd, or to increase its number; but it is agreed, nevertheless, on the part of Russia that during the last ten years of the term of this Convention not less than five per cent (5%) of the total number of seals on the Russian rookeries and hauling grounds will be killed annually, provided that said five per cent (5%) does not exceed eighty-five per cent (85%) of the three-year-old male seals hauling in such year.

If, however, the total number of seals frequenting the Russian islands in any year falls below eighteen thousand (18,000) enumerated by official count, then the allowance of skins mentioned above and all killing of seals except such as may be necessary for the support of the natives on the islands may be suspended until the number of such seals again exceeds eighteen thousand (18,000) enumerated in like manner.

ARTICLE XIII.

It is agreed on the part of Japan that of the total number of sealskins taken annually upon Robben Island, or any other islands or shores of the waters defined in Article I subject to the jurisdiction of Japan to which any seal herds hereafter resort, there shall be delivered at Robben Island at the end of each season ten per cent (10%) gross in number and value thereof to an authorized agent of the United States Government, ten per cent (10%) gross in number and value thereof to an authorized agent of the Canadian Government, and ten per cent (10%) gross in number and value thereof to an authorized agent of the Russian Government; provided, however, that nothing herein contained shall restrict the right of Japan at any time and from time to time during the first five years of the term of this Convention to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose during the term of this Convention such restrictions and regulations upon the total number of skins to be taken in any season, and the manner and times and places of taking them as may seem necessary to preserve and protect the Japanese herd, or to increase its number; but it is agreed, nevertheless, on the part of Japan that during the last ten years of the term of this Convention not less than five per cent (5%) of the total number of seals on the Japanese rookeries and hauling grounds will be killed annually, provided that said five per cent (5%) does not exceed eighty-five per cent (85%) of the three-year-old male seals hauling in such year.

If, however, the total number of seals frequenting the Japanese islands in any year falls below six thousand five hundred (6,500) enumerated by official count, then the allowance of skins mentioned above and all killing of seals except such as may be necessary for the support of the natives on the islands may be suspended until the number of such seals again exceeds six thousand five hundred (6,500) enumerated in like manner.

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ARTICLE XIV.

It is agreed on the part of Great Britain that in case any seal herd hereafter resorts to any islands or shores of the waters defined in Article I subject to the jurisdiction of Great Britain, there shall be delivered at the end of each season during the term of this Convention ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an authorized agent of the United States Government, ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an authorized agent of the Japanese Government, and ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an authorized agent of the Russian Government.

ARTICLE XV.

It is further agreed between the United States and Great Britain that the provisions of this Convention shall supersede, in so far as they are inconsistent therewith or in duplication thereof, the provisions of the treaty relating to the fur seals, entered into between the United States and Great Britain on the 7th day of February, 1911.

ARTICLE XVI.

This Convention shall go into effect upon the 15th day of December, 1911, and shall continue in force for a period of fifteen (15) years from that date, and thereafter until terminated by twelve (12) months' written notice given by one or more of the Parties to all of the others, which notice may be given at the expiration of fourteen years or at any time afterwards, and it is agreed that at any time prior to the termination of this Convention, upon the request of any one of the High Contracting Parties, a conference shall be held forthwith between representatives of all the Parties hereto, to consider and if possible agree upon a further extension of this Convention with such additions and modifications, if any, as may be found desirable.

ARTICLE XVII.

This Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, by His Britannic Majesty, by His Majesty the Emperor of Japan, and by His Majesty the Emperor of all the Russias; and ratifications shall be exchanged at Washington as soon as practicable.

In faith whereof, the respective Plenipotentiaries have signed this Convention in quadruplicate and have hereunto affixed their seals.

Done at Washington the 7th day of July, in the year one thousand nine hundred and eleven.

| | |
|---|---|
| CHARLES NAGEL | [SEAL] |
| CHANDLER P. ANDERSON | [SEAL] |
| JAMES BRYCE | [SEAL] |
| JOSEPH POPE | [SEAL] |
| Y. UCHIDA | [SEAL] |
| H. DAUKE | [SEAL] |
| P. BOTKINE | [SEAL] |
| NOLDE | [SEAL] |

And whereas the said Convention has been duly ratified on the part of each of the High Contracting Parties, and the ratifications of the four Governments were exchanged in the City of Washington, on the twelfth day of December, one thousand nine hundred and eleven;

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Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fourteenth day of December in the year of our Lord one thousand nine hundred and [SEAL] eleven, and of the Independence of the United States of America the one hundred and thirty-sixth.

WM H TAFT

By the President:
P C KNOX
*Secretary of State.*

Apr. 21, 1910.

36 Stat. L., 326–7–8.

Seal fisheries, etc.

Secretary of Commerce and Labor to make regulations for killing, etc., seals.

*Provisos.*

Restricted to officials, etc.

Limit.

SEC. 289. That the Secretary of Commerce and Labor shall have power to authorize the killing of fur seals and the taking of sealskins on the Pribilof Islands, in Alaska, under regulations established by him prescribing the manner in which such killing shall be done and limiting the number of seals to be killed, whenever he shall determine that such killing is necessary or desirable and not inconsistent with the preservation of the seal herd: *Provided, however*, That under such authority the right of killing fur seals and taking sealskins shall be exercised by officers, agents, or employees of the United States appointed by the Secretary of Commerce and Labor, and by the natives of the Pribilof Islands under the direction and supervision of such officers, agents, or employees, and by no other person: *And provided further*, That male seals only shall be killed and that not more than ninety-five per centum of three-year-old male seals shall be killed in any one year.

NOTE.—For prior acts authorizing the Secretary of the Treasury to fix time for taking seals on St. Paul and St. George Islands, see act of March 24, 1874 (18 Stat. L., 24; R. S., 1959, 1960–1972), and act of July 1, 1870 (16 Stat. L., 180).

Sales.

Ibid.

*Proviso.*

Subject to future treaties.

SEC. 290. That any and all sealskins taken under the authority conferred by the preceding section shall be sold by the Secretary of Commerce and Labor in such market, at such times, and in such manner as he may deem most advantageous; and the proceeds of such sale or sales shall be paid into the Treasury of the United States: *Provided*, That the directions of this section, relating to the disposition of sealskins and the proceeds thereof, shall be subject to the provisions of any treaty hereafter made by the United States for the protection of seal life.

Employment of Pribilof natives.

Compensation.

Ibid.

SEC. 291. That whenever seals are killed and sealskins taken on any of the Pribilof Islands the native inhabitants of said islands shall be employed in such killing and in curing the skins taken, and shall receive for their labor fair compensation, to be fixed from time to time by the Secretary of Commerce and Labor, who shall have the authority to prescribe by regulation the manner in which such compensation shall be paid to the said natives or expended or otherwise used in their behalf and for their benefit.

Ibid.

R. S., sec. 1956, p. 343, amended.

Vol. 30, p. 1279, amended.

Killing seals and other fur-bearing animals forbidden; punishment.

SEC. 292. No person shall kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal, within the limits of Alaska Territory or in the waters thereof; and every person guilty thereof shall, for each offense, be fined not less than two hundred nor more than one thousand dollars or imprisoned not more than six months, or both; and all vessels, their tackle, apparel, furniture, and cargo found engaged in violation of this section shall be forfeited; but

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Permission by Secretary of Commerce and Labor. Prevention of illegal killing.

the Secretary of Commerce and Labor shall have power to authorize the killing of any such mink, marten, sable, fur seal, or other fur-bearing animal under such regulations as he may prescribe; and it shall be the duty of the Secretary of Commerce and Labor to prevent the killing of any fur seal except as authorized by law and to provide for the execution of the provisions of this section until it is otherwise provided by law.

SEC. 292a. The Secretary of the Treasury to fix price for fox skins at Saint Paul Island. Act of August 18, 1894, Revised Statutes, II Supplement, chapter 301, paragraph 8, page 253.

* * * * * * *

Aug. 18, 1894.

28 Stat. L., 372. St. Paul Island. Price for fox skins.

Saint Paul Island * * *; and the Secretary of the Treasury is hereby required to fix a reasonable price to be paid the natives of said island for blue fox skins secured by them.

April 21, 1910. 36 Stat. L., 326-7-8. R. S., sec. 1959, p. 344, amended. Vol. 30, p. 1280, amended. Pribilof Islands made a special reservation. Landing, etc., on, unlawful.

SEC. 293. The Pribilof Islands, including the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock, in Alaska, are declared a special reservation for Government purposes; and until otherwise provided by law it shall be unlawful for any person to land or remain on any of those islands, except through stress of weather or like unavoidable cause or by the authority of the Secretary of Commerce and Labor; and any person found on any of those islands contrary to the provisions hereof shall be summarily removed and shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both fine and imprisonment; and it shall be the duty of the Secretary of Commerce and Labor to carry this section into effect.

Punishment.

Ibid. R. S., sec. 1961, p. 344, amended. Vol. 30, p. 1280, amended. Restriction on female or young seals, etc.

SEC. 294. It shall be unlawful to kill any female seal or any seal less than one year old at any season of the year, except as above provided; and it shall also be unlawful to kill any seal in the waters adjacent to the Pribilof Islands, or on the beaches, cliffs, or rocks where they haul up from the sea to remain; and every person who violates the provisions of this or the preceding section shall be punished for each offense by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment not more than six months, or by both such fine and imprisonment; and all vessels, their tackle, apparel, and furniture, whose crews are found engaged in the violation of either this or the preceding section, shall be forfeited to the United States.

Punishment.

Ibid. Additional officers, etc., authorized.

SEC. 295. That the Secretary of Commerce and Labor shall have authority to appoint such additional officers, agents, and employees as may be necessary to carry out the provisions of this act and the laws of the United States relating to the seal fisheries of Alaska, to prescribe their duties and to fix their compensation; he shall likewise have authority to purchase from the present lessee of the right to take seals on the islands of Saint Paul and Saint George, at a fair valuation to be agreed upon, the warehouses, salt houses, boats, launches, lighters, horses, mules, wagons, and other property of the said lessee on the islands of Saint Paul and Saint George, including the dwellings of the natives of said islands; he shall likewise have authority to establish and maintain depots for provisions and supplies on the Pribilof Islands and to provide for the transportation of such provisions and supplies from the mainland of the United States to the said islands by the charter of private vessels or by the use of public vessels of the United States which may be placed at his disposal by the President; and he shall likewise have authority to furnish food, shelter, fuel, clothing, and other necessaries of life to the native inhabitants of the Pribilof Islands and to provide for their comfort, maintenance, education, and protection.

Ibid. Purchase of right of present lessee, etc.

Maintenance of depots, etc.

Food, etc., to natives.

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Ibid.
Laws repealed.
R. S., secs. 1962–1972, pp. 344–346.

SEC. 296. That sections nineteen hundred and sixty-two, nineteen hundred and sixty-three, nineteen hundred and sixty-four, nineteen hundred and sixty-five, nineteen hundred and sixty-six, nineteen hundred and sixty-seven, nineteen hundred and sixty-eight, nineteen hundred and sixty-nine, nineteen hundred and seventy, nineteen hundred and seventy-one, and nineteen hundred and seventy-two of the Revised Statutes of the United States, and all acts and parts of acts inconsistent with this act are hereby repealed. The provisions of this act shall take effect from and after the first day of May, nineteen hundred and ten; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and fifty thousand dollars for carrying into effect the provisions of this act.

Effect.
Appropriation.

NOTE.—The above sections repealed, to wit, 1962 to 1972, inclusive, of the Revised Statutes, limit the number of seals to be killed and provide for leasing seal fisheries, who may lease, covenants in lease, penalty for other than lessees killing seals, penalty upon lessees for killing more seals than permitted by law, tax upon seal skins, for termination of lease, for lessees to furnish copies of lease to masters of their vessels, right of Congress to amend or repeal laws reserved.

June 25, 1910.
36 Stat. L., 763.
Alaskan seal fisheries.
Agents' salaries, etc.

SEC. 297. Alaskan seal fisheries: For salaries of agents at seal fisheries in Alaska, as follows: For one agent, three thousand six hundred and fifty dollars; one assistant agent, two thousand nine hundred and twenty dollars; two assistant agents, at two thousand one hundred and ninety dollars each; one naturalist, three thousand dollars; janitor service at the Government buildings at the Pribilof Islands, not exceeding four hundred and eighty dollars; in all, fourteen thousand four hundred and thirty dollars.

Food, etc., for natives.

For furnishing food, fuel, and clothing and other necessaries of life to the native inhabitants on the islands of Saint Paul and Saint George, Alaska, nineteen thousand five hundred dollars.

NOTE.—Act of March 3, 1875 (18 Stat. L., 375, R. S., 1974), providing compensation for agents, is repealed by the foregoing section.

Mar. 4, 1911.
36 Stat. L., 1441.
Alaska Fisheries Service.
Protecting seal fisheries.
Food to natives, etc.
Salmon fisheries.

SEC. 298. Alaska Fisheries Service: For protecting the seal fisheries of Alaska, including the furnishing of food, fuel, and clothing and other necessities of life to the natives of the Pribilof Islands, Alaska, transportation of supplies to and from the islands, expenses of travel of agents and other employees, purchase, hire, and maintenance of vessels, including crews for same, and for all other expenses necessary to carry out the provisions of the act of April twenty-first, nineteen hundred and ten, entitled "An act to protect the seal fisheries of Alaska and for other purposes; and for the protection of the salmon fisheries of Alaska, including travel, hire of boats, employment of temporary labor, and all other necessary expenses connected therewith," one hundred thousand dollars, to be immediately available.

NOTE.—For other incidental appropriations for the protection of Alaskan seal fisheries, see act of June 25, 1910 (36 Stat. L., 711), appropriation for Revenue-Cutter Service. Provision as follows: "For maintenance of vessels in the protection of the seal fisheries in Bering Sea and the other waters of Alaska, and the enforcement of the provisions of law in Alaska."

Also see act of March 4, 1911 (36 Stat. L., 1338), appropriation for Revenue-Cutter Service, as follows: "For maintenance of vessels in the protection of the seal fisheries in Bering Sea and the other waters of Alaska and the enforcement of the provisions of the law of Alaska." The above appropriations include many items, so it is impossible to determine just what amount is appropriated for the protection of the Alaskan seal fisheries and the enforcement of the laws in Alaska.

Mar. 5, 1872.
17 Stat. L., 35.
R. S., 1975.
Agents shall not be financially interested.

SEC. 299. Agents shall never be interested, directly or indirectly, in any lease of the right to take seals, nor in any proceeds or profits thereof, either as owner, agent, partner, or otherwise.

Charlton Code, p. 23, sec. 1975.

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Mar. 5, 1872.
17 Stat. L., 35.
R. S., 1976.
Agents empowered to administer oaths.

SEC. 300. Agents are empowered to administer oaths in all cases relating to the service of the United States, and to take testimony in Alaska for the use of the Government in any matter concerning the public revenues.

Charlton Code, p. 23, sec. 1976.

NOTE.—While sections 1973 and 1974 of the Revised Statutes, providing for the appointment of agents and fixing their compensation, do not seem to be expressly repealed, yet they are superseded by provisions in the various appropriation acts providing for salaries of agents, etc., for the protection of Alaskan seal fisheries.

Feb. 21, 1893.
27 Stat. L., 472.
Fur seals.
Extension of protection to North Pacific Ocean.
Treaties, 1st sess., 52 Cong., p. 101.
R. S., 1956, p. 343.
Proclamation by President when international arrangement effected.
Prosecution of violations.

SEC. 301. That whenever the Government of the United States shall conclude an effective international arrangement for the protection of fur seals in the North Pacific Ocean, by agreement with any power, or as a result of the decision of the tribunal of arbitration under the convention concluded between the United States and Great Britain February twenty-ninth, eighteen hundred and ninety-two, and so long as such arrangement shall continue, the provisions of section nineteen hundred and fifty-six of the Revised Statutes, and all other provisions of the statutes of the United States, so far as the same may be applicable, relative to the protection of fur seals and other fur-bearing animals within the limits of Alaska or in the waters thereof, shall be extended to and over all that portion of the Pacific Ocean included in such international arrangement. Whenever an effective international arrangement is concluded as aforesaid, it shall be the duty of the President to declare that fact by proclamation, and to designate the portion of the Pacific Ocean to which it is applicable, and that this act has become operative; and likewise when such arrangement ceases, to declare that fact and that this act has become inoperative, and his proclamation with respect thereto shall be conclusive. During the extension as aforesaid of said laws for the protection of fur seals and other fur-bearing animals all violations thereof in said designated portion of the Pacific Ocean shall be held to be the same as if committed within the limits of Alaska or in the waters thereof, but they may be prosecuted either in the district court of Alaska or in any district court of the United States in California, Oregon, or Washington.

Charlton Code, pp. 41, 42.

May 17, 1884.
23 Stat. L., 24.
Governor to inquire into operations of Alaska Seal & Fur Co., and annually report to Congress.

SEC. 302. The governor appointed under the provisions of this act shall, from time to time, inquire into the operations of the Alaska Seal and Fur Company, and shall annually report to Congress the result of such inquiries and any and all violations by said company of the agreement existing between the United States and said company.

Charlton Code, p. 27, last paragraph of sec. 5.
See Political Code, sec. 350.

June 6, 1900.
31 Stat. L., 321.
Inquiry as to seal-killing operations.
Report of governor.

SEC. 303. The governor shall from time to time inquire into the operations of any person, company, association, or corporation authorized by the United States, by contract or otherwise, to kill seal or other fur-bearing animals in the district, and any and all violations by such person, company, association, or corporation of the agreement with the United States under which the operations are being conducted, and shall annually report to Congress the result of such inquiries.

Charlton Code, p. 66, part of sec. 2.

Mar. 3, 1893.
27 Stat. L., 585.
Investigation as to seal life on Pribilof Island.

SEC. 304. The Commissioner of Fisheries is authorized and required to investigate, under the direction of the Secretary of the Treasury, and when so requested report annually to him regarding the conditions of seal life upon the rookeries of the Pribilof Island;

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and he is also directed to continue the inquiries relative to the life history and migrations of the fur seals frequenting the waters of Bering Sea. Fur seals of Bering Sea.

NOTE.—The authority granted to the legislature of Alaska by act of Aug. 24, 1912, does not extend to fish, fur seals, and fur-bearing animals. See sec. 410, ch. 3, Title XI, of this code.

HISTORY OF LEGISLATION AND TREATIES.

This act prohibits the killing of seal, otter, mink, etc., or other fur-bearing animals within the limits of Alaska Territory, and provides for fines and imprisonment and seizure and forfeiture of vessels, tackle, etc. July 27, 1868. 15 Stat. L., 240. R. S., sec. 1956.

It also provides that the Secretary of the Treasury may authorize the killing of mink, marten, sable, or other fur-bearing animals, except fur seals; and it makes it the duty of the Secretary of the Treasury to enforce the act.

It also provides for the jurisdiction of courts, and that the collectors of customs, marshals, etc., may seize vessels and make arrests, etc.

Joint resolution providing that the islands of St. Paul and St. George shall be a special reservation, and prohibiting all persons from landing on the islands except by permission of the Secretary of the Treasury, and providing for penalties, etc. Mar. 3, 1869. 15 Stat. L., 348. R. S., sec. 1959.

This act prohibits the killing of any fur seal upon the islands of St. Paul and St. George except during the months of June, July, September, and October of each year.

It also prohibits the use of firearms; but the natives of the islands are permitted to kill young seals for food and older ones for clothing. July 1, 1870. 16 Stat. L., 180. R. S., sec. 1960.

This section prohibits the killing of any female seal less than one year old, and also makes it unlawful to kill any seal in the waters adjacent to the islands of St. Paul and St. George, etc., and provides for fines, imprisonment, and seizure of vessels, etc. Sec. 2, ibid. R. S., 1961.

This section limits for the period of 20 years from the 1st of July, 1870, the number of fur seals which may be killed upon the island of St. Paul to 75,000 per annum, and upon the island of St. George to 25,000 per annum, and provides that the Secretary of the Treasury may limit the right of killing if it becomes necessary for the preservation of the seals. Sec. 3, ibid. R. S., sec. 1962.

This section provides that immediately after the passage of this act the Secretary of the Treasury shall lease for rental mentioned in section 6 of this act to responsible parties for a term of 20 years from May 1, 1870, the right to engage in the business of taking fur seals on the islands of St. Paul and St. George, and makes provision for form of lease, bond, etc. Sec. 4, ibid.

This section provides that, on the expiration of the term of 20 years, or on the surrender or forfeiture of any lease, other leases may be made as aforesaid for 20 years only to American citizens, and provides a penalty for killing seals without authority, or for molesting lessees, for seizure and forfeiture of vessels, and also penalty upon lessees for killing fur seals in excess of the number authorized, and also penalty for selling distilled spirits to natives. Sec. 5, ibid.

This section provides for an annual rental of not less than $50,000 and a tax upon seal skins of $2; and that the Secretary of the Treasury may make needful rules and regulations. Sec. 6, ibid.

It also provides that he may forfeit or terminate lease upon satisfactory proof of violation of any of its provisions.

This section provides that the seventh and eighth sections of the act to extend the laws of the United States relating to customs, commerce, and navigation to Alaska shall be deemed to apply to this act, and that all prosecutions shall be conducted in courts provided for in said act. Sec. 7, ibid.

This section provides that Congress may at any time alter, amend, or repeal the act. Sec. 8, ibid.

NOTE.—The foregoing provisions are included in R. S., secs. 1963 to 1972, inclusive.

This act provides that the Secretary of the Treasury may appoint an agent of seal fisheries at $10 a day and three assistant agents; also that he may erect a dwelling on each of the islands of St. Paul and St. George, and also that the agents are authorized to administer oaths and take testimony. Mar. 5, 1872. 17 Stat. L., 35. R. S., sec. 1973, 1974, 1975, and 1976.

This act amends Revised Statutes, section 1960, by providing that the Secretary of the Treasury may designate the months in which seals may be killed, and also amends section 1962 by authorizing the Secretary of the Treasury to designate the number that may be killed. Mar. 24, 1874. 18 Stat. L., 24. Amends R. S., sec. 1960, and sec. 1962. See 1st Supp., R. S., p. 6.

This act authorizes the Secretary of the Treasury to appoint a special agent to investigate and report on the condition of seal fisheries and fur-bearing animals. Apr. 22, 1874. 18 Stat. L., 33.

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Mar. 3, 1875. 18 Stat. L., 375. R. S., 1st Supp., 73.
This act makes appropriation and provides for one agent at $3,650 a year, one assistant at $2,920, and two assistants at $2,190 each, and provides that no payments shall be made from indefinite appropriations.

July 31, 1876. 19 Stat. L., 118. R. S., 1st Supp., 115.
This act makes appropriation for salaries and expenses of agents and provides that two agents, whose salaries are fixed at $2,190, be discontinued after October 1, 1876.

June 20, 1878. 20 Stat. L., 218.
This act makes the same appropriation for one agent, one assistant and two additional assistants, salaries, expenses, etc., in all, $13,350.

Mar. 3, 1879. 20 Stat. L., 384.
This act contains the same appropriation for the same purpose as foregoing act.

June 16, 1880. 21 Stat. L., 266.
This act provides that the Secretary of the Treasury may use revenue steamers for the protection of seal islands and appropriates $20,000 for expenses in the enforcement of the law.

Mar. 3, 1881. 21 Stat. L., 441.
This act provides for the same appropriation for the same purposes as act of June 20, 1878, ante.

Aug. 7, 1882. 22 Stat. L., 314.
This act provides for the same agent and assistant agents and salaries, expenses, etc., as heretofore, and enables the Secretary of the Treasury to use revenue steamers to protect seal islands and enforce laws, and makes an appropriation of $25,000.

Mar. 3, 1883. 22 Stat. L., 612.
Same as the foregoing act.

May 17, 1884. 23 Stat. L., 24. R. S., 1st Supp., p. 432.
This act provides that the governor shall, from time to time, inquire into the operations of the Alaska Seal & Fur Co. and shall annually report to Congress the result of such inquiries and any violations, etc.

July 7, 1884. 23 Stat. L., 206.
This act provides for the appropriation for the same purposes as act of June 20, 1878, ante, and enables the Secretary of the Treasury to use revenue steamers for the protection of the seal islands—in all, $15,000.

Mar. 3, 1885. 23 Stat. L., 495.
This act makes appropriation for the same number of agents, same salaries, traveling expenses, etc.—in all, $17,500.

Aug. 4, 1886. 24 Stat. L., 237.
This act makes appropriation for the same number of agents, salaries, expenses, etc., $20,000.

Mar. 3, 1887. 24 Stat. L., 524.
This act makes appropriation for the same number of agents, salaries, expenses, etc.—in all, $13,350.

Jan. 20, 1888. 25 Stat. L., 1. R. S., sec. 4395, as amended.
This act provides that the President shall appoint a Commissioner of Fish and Fisheries, fixing his salary, etc.

Oct. 2, 1888. 25 Stat. L., 521.
This act provides for the same agent and assistants and appropriates $13,350.

Mar. 2, 1889. 25 Stat. L., 957.
This act provides for agent, same assistants, salaries, expenses, etc., and appropriates $13,350.

Mar. 24, 1889. 25 Stat. L., 1009. R. S., 1st Supp., sec. 701.
This act provides that section 1956 of Revised Statutes, United States, is hereby declared to include and apply to all the dominion of the United States in the waters of Bering Sea, and also provides that the President shall issue proclamations of warning.

NOTE.—See 26 Stat. L., pp. 1543 and 1558, for proclamations issued by President.

Apr. 5, 1890. 26 Stat. L., 46.
This act provides that the Secretary of the Treasury may appoint a special agent to examine and report upon the condition of the seal fisheries of Alaska, etc.

Aug. 30, 1890. 26 Stat. L., 387.
This act provides for the same agent and assistants, and appropriates $13,350.

Mar. 3, 1891. 26 Stat. L., 969.
This act provides for the same agents, etc., and makes same appropriation as preceding act.

June 15, 1891. 27 Stat. L., 980.
Proclamation by President of agreement with Great Britain.

Aug. 5, 1892. 27 Stat. L., 349.
This act provides for the same number of agents, salaries, expenses, etc., and appropriates $12,950. It also repeals act authorizing the Secretary of the Treasury to appoint a special agent under the act of 1890, said repeal to take effect July 1, 1893.

Feb. 29, 1892.
Proclamation of President of agreement with Great Britain to arbitrate, etc.

Aug. 25, 1892. 27 Stat. L., 365.
This act provides that the Commissioner of Fisheries shall prepare an annual estimate of the expenses of his office.

Dec. 24, 1892.
Proclamation of President reserving Afognak Island for fish-culture station.

Feb. 21, 1893. 27 Stat. L., 472. R. S., 2d Supp., p. 89.
This act provides for the extension of the laws for the protection of fur seals in the North Pacific Ocean whenever an agreement is made with any foreign power for the protection of fur seals, and provides that it is the duty of the President, on completion of an agreement, to issue a proclamation, and the prosecutions for the violations of the act may be had in the district courts of Alaska, California, Oregon, and Washington.

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| This act provides for an agent and three assistants and the same salaries as heretofore, and appropriates $12,950 for that purpose. | Mar. 3, 1893.<br>27 Stat. L., 590. |
| Proclamation by President of agreement with Great Britain. | Apr. 8, 1893. |
| This act is to give effect to the award rendered by the tribunal of arbitration under the treaty between the United States and Great Britain concluded February 29, 1892. This act recites the articles of award of arbitration and then enacts an act to carry them into effect, consisting of 12 sections. | Apr. 6, 1894.<br>28 Stat. L., 52.<br>Amended.<br>28 Stat. L., 64. |
| Proclamation by President of agreement with Great Britain and act giving it effect. | Apr. 9, 1894. |
| Proclamation of agreement modus vivendi with Russia. | May 9, 1894. |
| Proclamation by President of laws in force. | Feb. 18, 1895. |
| A proclamation issued by the President to put into effect an agreement between the United States and Russia, concluded on May 4, 1894, which recites the agreement and provides for its enforcement. | May 12, 1894.<br>28 Stat. L., 1202. |
| This is an act supplementary to the act of April 6, 1894, and provides that the provisions of said act shall be enforced against any citizen of the United States, or person owing duty of obedience to the laws or treaties of the United States, or persons belonging to or on board any vessel of the United States, etc. | June 5, 1894.<br>28 Stat. L., 85.<br>Aug. 18, 1894. |
| This act provides for the same agent and assistants and salaries and expenses, etc., as heretofore, and appropriates $12,950 for that purpose. | 28 Stat. L., 891.<br>Mar. 2, 1895. |
| This act provides for the same appropriation for the same purpose as the foregoing act. | 28 Stat. L., 932.<br>June 11, 1896. |
| Same appropriations for same purpose as foregoing act. | 29 Stat. L., 431.<br>June 4, 1897. |
| Same as foregoing act. | 30 Stat. L., 29.<br>Dec. 29, 1897. |
| This act, consisting of 10 sections, provides that no citizen of the United States or person owing duty of obedience to the laws or treaties thereof, or belonging to or on board any vessel of the United States, shall kill, capture, or hunt at any time or in any manner, fur seals in the waters of the Pacific Ocean north of the thirty-fifth degree of north latitude, and including Bering Sea and the Sea of Okhotsk.<br>It also provides that no person shall keep, use, or employ, or furnish aid in equipment or furnish supplies to, any vessel used in the killing or capturing of fur seals.<br>It also provides penalty for violation of provision.<br>It makes provision for jurisdiction of the district courts of Alaska, California, Oregon, and Washington, and excepts Indians and also excepts lawful taking of fur seals off Pribilof Islands, and provides for the searching of suspected vessels, and prohibits the importation into the United States of any fur seals taken in the waters mentioned in the act.<br>It also provides that the President shall have power to make all necessary regulations to carry the act into effect. | 30 Stat. L., 226. |
| This act provides for the same agent and assistants and same salaries and expenses, etc., as heretofore, and appropriates $12,950 for that purpose. | July 1, 1898.<br>30 Stat. L., 615. |
| Same as foregoing act. | Mar. 3, 1899. |
| (Penal Code.) Chapter 12, sections 173, 174, 175, 176, 177, and 178 practically reenact Revised Statutes, sections 1956, 1959, 1960, and 1961, and includes act of March 2, 1889, making St. Paul and St. George Islands special reservations, killing seal upon them prohibited, and also prohibiting the killing of any female seal less than 1 year old at any season of the year, and provides for fine, imprisonment, and forfeiture of vessels and tackle engaged in violating the law. | 30 Stat. L., 1093.<br>Mar. 3, 1899.<br>30 Stat. L., 1280. |
| This act provides for the same agent and three assistants, salaries, expenses, etc., as heretofore, and appropriates $12,950 for that purpose. | June 6, 1900.<br>31 Stat. L., 610. |
| This act provides that the governor shall, from time to time, inquire into the operations of any person or corporations authorized by contract or otherwise to kill seals, etc., and shall annually report to Congress the result of such inquiries. | June 6, 1900.<br>31 Stat. L., 322. |
| This act provides salary for agent, $3,650; one assistant, $2,920; two assistants at $2,190 each, and traveling expenses limiting to $12,950. | Mar. 3, 1901. |
| This act provides for the same agent and three assistants and salaries, expenses, etc., as heretofore, and appropriates $12,950 for that purpose. | 31 Stat. L., 1155.<br>June 28, 1902.<br>32 Stat. L., 449. |
| Same as foregoing act. | Mar. 3, 1903. |
| This act established the Department of Commerce and Labor. | 32 Stat. L., 1111.<br>Feb. 14, 1903. |
| A resolution authorizing the President to open negotiations with Great Britain for a new treaty. | 32 Stat. L., 825.<br>Apr. 8, 1904. |
| This act provides for the same agent and three assistants and salaries, expenses, etc., as heretofore, and appropriates $12,950 for that purpose. | 33 Stat. L., 586.<br>Apr. 27, 1904. |
| Same as foregoing act. | 33 Stat. L., 478.<br>Mar. 3, 1905.<br>33 Stat. L., 1181. |

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June 14, 1906. Act to prohibit aliens from fishing in waters of Alaska.

34 Stat. L., 263.
June 30, 1906. For the same purpose as act of March 3, 1905, but an appropriation of $11,430.

34 Stat. L., 721.
Mar. 4, 1907. Same as foregoing act.

34 Stat. L., 1329.
Apr. 11, 1908. Proclamation by President of agreement between United States and Great Britain relating to fisheries in United States and Canadian waters.

35 Stat. L., 2000.
May 27, 1908. Same as act of 1907.

35 Stat. L., 342.
Mar. 4, 1909. Same as foregoing act.

35 Stat. L., 981.
June 25, 1910. This act provides for the same agent and three assistants and salaries, expenses, as heretofore, and one naturalist at $3,000, and makes a total appropriation of $14,430.

36 Stat. L., 763.

NOTE.—These appropriations do not include the appropriations for the Revenue Service, which are in a lump sum, including service in Alaskan seal fisheries, nor does it include the appropriations for food and clothing for natives on St. Paul and St. George Islands.

Apr. 21, 1910. A new act was passed to protect the seal fisheries of Alaska and provides that the Secretary of Commerce and Labor shall make regulations for the killing of fur seals, which is to be done by the officers and agents of the Government, and that male seals only shall be killed, and not more than 95 per cent of 3-year-old seals in any one year.

36 Stat. L., 326.

It provides for the sale by the Secretary of Commerce and Labor of the skins, covering the money into the Treasury.

It amends Revised Statutes, section 1956, also the act of March 3, 1891, and section 173 of the Criminal Code, section 2053 of this code (30 Stat. L., 1279).

It also amends section 1959 and section 176 of the Criminal Code, section 2056 of this code, and amends section 1960, Revised Statutes, and section 177 of the Criminal Code, section 2057 of this code, and also amends section 1961, Revised Statutes, and section 178 of the Criminal Code, section 2058 of this code.

It also amends section 1 of act of December 29, 1897, and then provides that the Secretary of Commerce and Labor shall have authority to appoint such additional officers, agents, and employees as may be necessary to carry out the provisions of the act, and for the purchase of the right to the present lease and maintenance of depot, food for natives, and repeals Revised Statutes, sections 1962 to 1972, inclusive; and all acts or parts of acts inconsistent with this act are hereby repealed.

The act to take effect May 1, 1910, and appropriates the sum of $150,000 for carrying into effect the provisions of the act.

Mar. 4, 1911. Appropriation for Division of Alaskan Fisheries: Chief of division, $3,500; assistant, $1,800; clerks at $1,400, $1,200, and $900; agent for fur-seal fisheries, $3,650; assistant, $2,920; and two assistants at $2,190; naturalist, fur-seal fisheries, $3,000; janitor service, $480; two physicians on Pribilof Islands, $1,200 each; two school teachers at $1,200 each; storekeeper at $1,800; and then follows provisions for agents for salmon fisheries, with a total appropriation of $41,530.

36 Stat. L., 1439.

Treaty with Great Britain, February 7, 1911, see for treaty in full after section 288, ante.

Convention with Great Britain, Russia, and Japan, July 7, 1911, see in full after section 288, ante.

NOTE.—Article XV of treaty between United States and other powers signed July 7, 1911, and proclaimed December 14, 1911, supersedes the provisions in so far as they are inconsistent therewith or in duplication thereof of the treaty with Great Britain of the 7th day of February, 1911.

Aug. 24, 1912. This act prohibits the killing of fur seals for a period of five years from the date of this act.

37 Stat. L., 499.

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# TITLE VIII.

## ALASKA FUND.

May 14, 1906.
34 Stat. L., 192.

SEC. 305. That all moneys derived from and collected for liquor licenses, occupation or trade licenses outside of the incorporated towns in the District of Alaska shall be deposited in the Treasury Department of the United States, there to remain as a separate and distinct fund, to be known as the 'Alaska fund,' and to be wholly devoted to the purposes hereinafter stated in the District of Alaska. One-fourth of said fund, or so much thereof as may be necessary, shall be devoted to the establishment and maintenance of public schools in said district; five per centum of said fund shall be devoted to the care and maintenance of insane persons in said district, or so much of said five per centum as may be needed; and all the residue of said fund shall be devoted to the construction and maintenance of wagon roads, bridges, and trails in said district: *And provided further*, That the clerk of the court of each judicial division of said district is authorized, and he is hereby directed, whenever considered necessary, to call upon the United States marshal of said judicial division to aid in the collection of said license moneys by designating regular or special deputies of his office to act as temporary license inspectors, and it shall be the duty of said United States marshal to render such aid; and the said regular or special deputies, while actually engaged in the performance of this duty, shall receive the same fees and allowances and be paid in the same manner as when performing their regular duties."

Alaska fund.
Liquor, trade, etc., license fees outside incorporated towns to constitute the "Alaska fund."
Vol. 33, p. 616, amended.
Use of fees.

*Proviso.*
Collection of license fees.

Marshal's deputies to act as license inspectors.

Fees.

Feb. 6, 1909.
35 Stat. L., 601.

SEC. 306. So much of the act approved January twenty-seventh, nineteen hundred and five, entitled, "An act to provide for the construction and maintenance of roads, establishment and maintenance of schools, and care and support of insane persons in the District of Alaska, and for other purposes," as provides that five per centum of the license moneys collected outside of incorporated towns in the District of Alaska shall be devoted to the care and maintenance of such insane persons is hereby repealed, and such five per centum, or so much thereof as may be necessary, shall hereafter be applied to and used for the establishment and maintenance of public schools in said district, under the supervision of the governor.

"Alaska fund."
Use of, for care, etc., of insane, repealed.
Vol. 33, p. 616, amended.

To be used for school purposes.

NOTE.—For the creation of Alaska fund, see act of January 27, 1905, which reads as follows (33d Stat. L., 616):

"All moneys derived from and collected for liquor licenses, occupation or trade licenses outside of the incorporated towns in the District of Alaska, shall be deposited in the Treasury Department of the United States, there to remain as a separate and distinct fund, to be known as the Alaska fund, and to be wholly devoted to the purposes hereinafter stated in the District of Alaska."

For license law, see section 460 of an act entitled "An act to define and punish crimes in the District of Alaska, and to provide a code of criminal procedure for the District." As amended by act of June 6, 1900, 31 Stat. L., 330. (See sec. 2569 of this volume.)



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# TITLE IX.

## EDUCATION.

(Department of the Interior) Bureau of Education.


| Chap. | | Sec. |
|---|---|---|
| 1. | Education of Eskimos and Indians | 307 |
| 2. | Education of white children and mixed blood outside of municipalities | 319 |
| 3. | Reindeer service | 325 |
| | (NOTE.—For schools in municipalities see Civil Code, chapter 21.) | |
| | (NOTE.—*Decisions:* Reservations for public schools in Alaska may be made by the department. 18 L. D., 288.) | |
| 4. | Historical Library and Museum | 327 |


## CHAPTER ONE.

### EDUCATION OF ESKIMOS AND INDIANS.

(Department of the Interior) Bureau of Education.


Sec.
307. Appropriation, May 17, 1884, for education of children.
307½. Education of children. (Note: History of school laws and annual appropriations from 1886 to June 30, 1901.)
308. License money outside of incorporated towns to be used for support of schools. (Note: Total amount expended from 1901 to 1906.)
309. Schools for Eskimos and Indians.
310. Appropriation for schools fixing compensation of agents or inspectors, June 30, 1906.
311. Appropriation, March 4, 1907, for schools fixing compensation of agents or inspectors.
312. Appropriation, May 27, 1908, for schools fixing compensation of agents or inspectors and for services in Washington, D. C.
313. Appropriation, March 4, 1909, for schools, fixing compensation of agents or inspectors and for services in Washington, D. C.
314. Appropriation, June 25, 1910, for schools, fixing compensation of agents or inspectors and for services in Washington, D. C.
315. Appropriation, March 4, 1911, for schools, fixing compensation of agents or inspectors and for services in Washington, D. C. (Note: Summary of expenditures for 1909 and 1910.)
316. Instructions regarding effects of alcoholic drinks, and narcotics, compulsory.
317. Teachers may assign pay.
318. Employees of the Alaska School Service may be appointed special peace officers.


May 17, 1884.
23 Stat. L., 27.
Education of children.

SEC. 307. That the Secretary of the Interior shall make needful and proper provision for the education of the children of school age in the Territory of Alaska, without reference to race, until such time as permanent provision shall be made for the same, and the sum of twenty-five thousand dollars, or so much thereof as may be necessary is hereby appropriated for this purpose.

Appropriation.

Charlton Code, p. 30, sec. 13.

Education of children.
June 6, 1900.
31 Stat. L., 330.

SEC. 307½. The Secretary of the Interior shall make needful and proper provision and regulations for the education of the children of school age in the District of Alaska, without reference to race and their compulsory attendance at school, until such time as permanent provision shall be made for the same.



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Charlton Code, p. 74, sec. 28.

NOTE.—All schools were supported by annual appropriation up to June 30, 1901, "For the education of the children of school age in the Territory of Alaska without regard to race, as follows:"

| School year. | Appropriation. | Reference to Statutes at Large. | School year. | Appropriation. | Reference to Statutes at Large. |
|---|---|---|---|---|---|
| 1886-87 | $15,000 | 24-243 | 1893-94 | 30,000 | 27- 596 |
| 1886 | [1] 20,000 | 24- 45 | 1894-95 | 30,000 | 28- 399 |
| 1887-88 | 25,000 | 24-529 | 1895-96 | 30,000 | 28- 941 |
| 1887 | [1] 20,000 | 24-465 | 1896-97 | 30,000 | 29- 437 |
| 1888-89 | 40,000 | 25-528 | 1896-97 | [2] 1,500 | 29- 292 |
| 1889-90 | 50,000 | 25-962 | 1897-98 | 30,000 | 30- 39 |
| 1890-91 | 50,000 | 26-393 | 1898-99 | 30,000 | 30- 624 |
| 1891-92 | 50,000 | 26-970 | 1899-1900 | 30,000 | 30-1101 |
| 1892-93 | 40,000 | 27-372 | 1900-1901 | 30,000 | 31- 620 |

[1] Indian pupils of both sexes at industrial school.
[2] For Indian school at Circle City.

AN ACT Making further provision for a civil government in Alaska and for other purposes, June 6, 1900.

Under title 3, Civil Code for the District of Alaska, chapter 21, section 202, provides for the election of a school board of three directors, who shall have the exclusive supervision and control of schools within the municipal corporation. (See vol. 31, Stat. L., 521.) Said schools to be supported by 50 per cent of the license moneys collected within their corporate limits. (Amended by act of Apr. 28, 1904, 33 Stat. L., 529.)

By act of March 3, 1901, entitled "An act making further provision for a civil government in Alaska," volume 31, Stat. L., 1438, amending said act, provides for support of schools outside of municipalities, see next section.

Mar. 3, 1901.
31 Stat. L., 1438.
License money outside of incorporated towns to be used by the Secretary of the Interior for schools.

SEC. 308. Fifty per centum of all license moneys provided for by said act of Congress approved March third, eighteen hundred and ninety-nine, and any amendments made thereto, that may hereafter be paid for business carried on outside incorporated towns in the District of Alaska, and covered into the Treasury of the United States, shall be set aside to be expended, so far as may be deemed necessary by the Secretary of the Interior, within his discretion and under his direction, for school purposes outside incorporated towns in said District of Alaska.

Charlton Code, p. 79.

NOTE.—From March 3, 1901, to June 30, 1906, the amount received from license money for educational purposes and expended by the Secretary of the Interior, through the Bureau of Education, for all schools outside of municipalities, was $334,438.46.

Prior to June 6, 1900, the education of all children was under the supervision of the Secretary of the Interior and was supported by annual appropriations by Congress. June 6, 1900, Congress passed an act providing for schools in municipalities, the election of a school board, and for their support out of license taxes. (See 31 Stat. L., 521.) (Amended by act of Apr. 28, 1904, 33 Stat. L., 529.) (Amended by acts of Jan. 27, 1905, 33 Stat. L., 619, and Mar. 3, 1905, 33 Stat. L., 1262.)

March 3, 1901, Congress, in the act providing for civil government in Alaska, provided that 50 per cent of all license moneys paid for business carried on outside of incorporated towns should be used for the support of the schools outside of incorporated towns. All schools outside of municipalities remained under the supervision of the Secretary of the Interior, and were supported by this license money until January 27, 1905.

January 27, 1905, Congress, in an act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, etc. (33 Stat. L., 616), provided that all moneys collected for liquor licenses, occupation, or trade licenses, outside of incorporated towns, shall be a distinct fund known as the "Alaska fund," and one-fourth of said fund or so much as necessary was authorized to be used for the establishment and maintenance of schools. The governor of the District was made ex officio superintendent of public schools, with authority to prescribe rules and regulations for the examination and



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qualification of teachers, with the provision that he shall make an annual report of the condition of the schools in the district to the Secretary of the Interior. This same act provides that the schools specified and provided for in the act shall be devoted to the education of white children and children of mixed blood who lead a civilized life. The education of the Eskimos and Indians in the district to remain under the direction and control of the Secretary of the Interior, and to be supported by annual appropriations by Congress.

Section 27 of act of June 6, 1900 (31 Stat. L., 321), providing a political code for Alaska (or civil government), provides that schools and missions shall not be disturbed in the possession of their lands. (See title missions.) Section 95, Title IV.

Section 475 of chapter 1, providing a code of criminal procedure, provides that no saloon license shall be issued to any person to conduct a saloon within 400 feet of a public school, etc. (See sec. 2584, code of criminal procedure, this volume.)

February 6, 1909, Congress amended the act of January 27, 1905, by repealing the provision that 5 per cent of the "Alaska fund" should be used for the care of the insane and providing that such 5 per cent of said fund should thereafter be applied to and used for the establishment and maintenance of public schools in said District under the supervision of the governor, making in all an appropriation of 30 per cent of the "Alaska fund," so-called, available to be expended under the direction of the governor for the education of white children and children of mixed blood outside of municipalities.

Jan. 27, 1905.
33 Stat. L., 619.
Schools for Eskimos and Indians.
*Post*, p. 1188.

SEC. 309. The education of the Eskimos and Indians in the District of Alaska shall remain under the direction and control of the Secretary of the Interior, and schools for and among the Eskimos and Indians of Alaska shall be provided for by an annual appropriation, and the Eskimo and Indian children of Alaska shall have the same right to be admitted to any Indian boarding school as the Indian children in the States or Territories of the United States.

Charlton Code, p. 114, part of sec. 7.

June 30, 1906.
34 Stat. L., 729–30.
Alaska.
Education, etc., of natives.
Pay, etc., of agents, etc.
*Proviso.*
Limit.

SEC. 310. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, one hundred thousand dollars: *Provided*, That any person or persons employed hereunder as special agents or inspectors, or to perform any special or unusual duty in connection herewith, shall not receive as compensation exceeding one hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty outside of the District of Columbia.

Mar. 4, 1907.
34 Stat. L., 1837.
Alaska.
Education, etc., of natives.
Pay, etc., of agents, etc.
*Proviso.*
Limit.

SEC. 311. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, one hundred thousand dollars: *Provided*, That any person or persons employed hereunder as special agents or inspectors, or to perform any special or unusual duty in connection herewith, shall not receive as compensation exceeding two hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty outside of the District of Columbia.

May 27, 1908.
35 Stat. L., 350.
Education of natives.

SEC. 312. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erec-

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tion, repair, and rental of school buildings not including hospital buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, two hundred thousand dollars: *Provided*, That any person or persons employed hereunder as special agents or inspectors, or to perform any special or unusual duty in connection herewith, shall not receive as compensation exceeding two hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty from their designated and actual posts of duty: *Provided*, That of the sum hereby appropriated not exceeding seven thousand dollars may be expended for personal services in the District of Columbia.

*Provisos.*
Limit of pay.

Services, Washington, D. C.

That all expenditure of money appropriated herein for school purposes in Alaska shall be under the supervision and direction of the Commissioner of Education and in conformity with such conditions, rules, and regulations as to conduct and methods of instruction and expenditure of money as may from time to time be recommended by him and approved by the Secretary of the Interior.

Supervision of expenditures.

Mar. 4, 1909.
35 Stat. L., 989.

SEC. 313. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, two hundred thousand dollars, so much of which sum as may be necessary for the purchase of supplies shall be immediately available: *Provided*, That no person employed hereunder as special agent or inspector, or to perform any special or unusual duty in connection herewith, shall receive as compensation exceeding two hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty from their designated and actual posts of duty: *Provided*, That of the sum hereby appropriated not exceeding seven thousand dollars may be expended for personal services in the District of Columbia.

Education of natives.

*Provisos.*
Limit of pay.

Services, Washington, D. C.

All expenditure of money appropriated herein for school purposes in Alaska shall be under the supervision and direction of the Commissioner of Education and in conformity with such conditions, rules, and regulations as to conduct and methods of instruction and expenditure of money as may from time to time be recommended by him and approved by the Secretary of the Interior.

Supervision of expenditures.

June 25, 1910.
36 Stat. L., 744.

SEC. 314. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, two hundred thousand dollars, so much of which sum as may be necessary for the purchase of supplies shall be immediately available: *Provided*, That no person employed hereunder as special agent or inspector, or to perform any special or unusual duty in connection herewith, shall receive as compensation exceeding two hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty from his

Education of natives.

*Provisos.*
Limit of pay.

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Services, Washington, D. C.

designated and actual post of duty: *Provided*, That of the sum hereby appropriated not exceeding seven thousand dollars may be expended for personal services in the District of Columbia.

Supervision of expenditures.

All expenditures of money appropriated herein for school purposes in Alaska shall be under the supervision and direction of the Commissioner of Education and in conformity with such conditions, rules, and regulations as to conduct and methods of instruction and expenditure of money as may from time to time be recommended by him and approved by the Secretary of the Interior.

Mar. 4, 1911.

36 Stat. L., 1420.

Education of natives.

SEC. 315. To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for textbooks and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians, and other employees, and all other necessary miscellaneous expenses which are not included under the above special heads, two hundred thousand dollars; so much of which sum as may be necessary for the purchase of supplies shall be immediately available: *Provided*, That no person employed hereunder as special agent or inspector, or to perform any special or unusual duty in connection herewith, shall receive as compensation exceeding two hundred dollars per month, in addition to actual traveling expenses and per diem not exceeding four dollars in lieu of subsistence, when absent on duty from his designated and actual post of duty: *Provided*, That of the sum hereby appropriated not exceeding seven thousand dollars may be expended for personal services in the District of Columbia.

*Provisos.* Limit of pay.

Services, Washington, D. C.

Supervision of expenditures.

All expenditures of money appropriated herein for school purposes in Alaska shall be under the supervision and direction of the Commissioner of Education and in conformity with such conditions, rules, and regulations as to conduct and methods of instruction and expenditure of money as may from time to time be recommended by him and approved by the Secretary of the Interior.

NOTE.—*Summary of expenditures from the fund for "Education of natives of Alaska, 1909–10."*

| | | |
|---|---|---|
| Appropriation | | $200,000.00 |
| Salaries of officials and clerks | $12,841.39 | |
| Salaries of superintendents | 9,231.67 | |
| Salaries of teachers | 76,602.81 | |
| Traveling expenses of inspectors, superintendents, and teachers | 13,162.13 | |
| Text books, stationary, apparatus, furniture, and industrial supplies | 10,364.36 | |
| Fuel and light | 12,221.54 | |
| Local expenses | 2,089.26 | |
| Freight on supplies | 11,361.47 | |
| Repairs and rent | 4,264.61 | |
| Janitor work | 417.42 | |
| Erection of buildings | 23,573.42 | |
| Sanitation and medical relief | 15,731.02 | |
| Relief of destitution | 3,751.67 | |
| Reserved for contingenies | 4,387.23 | |
| Total | | 200,000.00 |

Appropriation for education of natives of Alaska, 1911–1913, $200,000.

May 20, 1886.

24 Stat. L., 69.

Instructions regarding effects of alcoholic drinks and narcotics compulsory.

SEC. 316. That the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the military and naval schools,

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and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of textbooks in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States.

(2) That it shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required, and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases.

(3) That no certificate shall be granted to any person to teach in the public schools of the District of Columbia or Territories after the first day of January, anno Domini eighteen hundred and eighty-eight, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system.

Mar. 21, 1906. [H. J. R. 97.]

[Pub. Res., No. 10.]

34 Stat. L., 824.

Alaska.

Teachers employed by Bureau of Education in, may assign pay. Reimbursement.

SEC. 317. The Secretary of the Interior be, and he is hereby, authorized to permit teachers and other employees of the United States Bureau of Education employed in Alaska to make assignments of their pay, under such regulations as he may prescribe, during such time as they may be in the employ of the Bureau of Education in Alaska; and the Secretary of the Interior is further authorized, in his discretion, under such regulations as he may prescribe, to reimburse school teachers in Alaska for expenses incurred by them in the discharge of their duties and paid from their personal funds.

Mar. 3, 1909.

35 Stat. L., 837.

Special peace officers, employees of the Alaska school service may be appointed.

SEC. 318. That the Attorney General shall have power to appoint, in his discretion, any person employed in the Alaska school service who may be designated by the Secretary of the Interior as a special peace officer of the division of the District of Alaska in which such person resides; and such special peace officer shall have authority to arrest, upon warrant duly issued, any native of the District of Alaska charged with the violation of any of the provisions of the Criminal Code of Alaska (act March third, eighteen hundred and ninety-nine, second supplement Revised Statutes, page one thousand and three) or any amendments thereof, or any white man charged with the violation of any of said provisions to the detriment of any native of the District of Alaska; and such peace officer shall also have authority to make such arrests, without warrant, for a crime committed or attempted in his presence, or when the person arrested has committed a felony, although not in his presence, or when a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it; and any person so arrested shall be taken, in accordance with such rules and regulations as may be prescribed by the Attorney General, and without unnecessary delay, before a United States commissioner or other judicial officer for trial: *Provided, however*, That no person so appointed shall be entitled to any fees or emoluments of any character whatsoever for performing any of the services herein mentioned, but may be allowed, in the discretion of the Attorney General, expenses actually and necessarily incurred in connection with such services.

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# CHAPTER TWO.

## WHITE CHILDREN AND CHILDREN OF MIXED BLOOD OUTSIDE OF MUNICIPALITIES.

Sec.
319. One-fourth of license fees outside of incorporated towns appropriated for school purposes.
320. Education of white, etc., children.
321. Appropriation out of fund for school purposes.
322. Five per cent allowed for care of insane, repealed and added to school fund.
323. Governor made superintendent of public instruction, to report to the Secretary of the Interior.
324. Petitions for establishing school districts outside incorporated towns; order establishing districts; officers provided for and elections; wages of teachers; provision for schoolhouses, reports, etc.

May 14, 1906.
34 Stat. L., 192.
Alaska.
Liquor trade, etc., license fees outside incorporated towns to constitute the "Alaskan fund."
Vol. 30, p. 1336.
33 St. L., 616.
Division and use of fund.

SEC. 319. That all moneys derived from and collected for liquor licenses, occupation or trade licenses outside of the incorporated towns in the District of Alaska shall be deposited in the Treasury Department of the United States, there to remain as a separate and distinct fund to be known as the "Alaska fund," and to be wholly devoted to the purposes hereinafter stated in the District of Alaska.

One-fourth of said fund, or so much thereof as may be necessary, shall be devoted to the establishment and maintenance of public schools in said district; five per centum of said fund shall be devoted to the care and maintenance of insane persons in said district, or so much of said five per centum as may be needed; and all the residue of said fund shall be devoted to the construction and maintenance of wagon roads, bridges, and trails in said district:

*Proviso.*

*And provided further*, That the clerk of the court of each judicial division of said district is authorized, and he is hereby directed, whenever considered necessary, to call upon the United States marshal of said judicial division to aid in the collection of said license moneys by designating regular or special deputies of his office to act as temporary license inspectors, and it shall be the duty of said United States marshal to render such aid; and the said regular or special deputies, while actually engaged in the performance of this duty, shall receive the same fees and allowances and be paid in the same manner as when performing their regular duties.

Jan. 27, 1905.
33 Stat. L., 619.
Education of white, etc., children.

SEC. 320. That the schools specified and provided for in this act shall be devoted to the education of white children and children of mixed blood who lead a civilized life.

Charlton Code, p. 114, part of sec. 7.

Davis *v.* Sitka School Board, 3 Alaska Rep., 494, 495. Held, that mandamus will not lie to compel school board to admit children of mixed blood who do not lead a civilized life.

NOTE.—For construction of statute see note under Title XII, Construction of Statutes.

Mar. 3, 1905.
33 Stat. L., 1170.
Alaska fund.
Ante, p. 616.

SEC. 321. That the moneys described as the "Alaska fund," in section 1 of "An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved January twenty-seventh, nineteen hundred and five, be, and the same are hereby, appropriated out of the Treasury of the United States for the uses and purposes in said act mentioned.

Feb. 6, 1909.
35 Stat. L., 601.
"Alaska fund."
Use of, for care, etc., of insane, repealed.
Vol. 33, p. 616, amended.

SEC. 322. So much of the act approved January twenty-seventh, nineteen hundred and five, entitled "An act to provide for the construction and maintenance of roads, establishment and maintenance of schools, and care and support of insane persons in the District of Alaska, and for other purposes," as provides that five per centum of the license moneys collected outside of incorporated towns in the Dis-

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trict of Alaska shall be devoted to the care and maintenance of such insane persons is hereby repealed, and such five per centum, or so much thereof as may be necessary, shall hereafter be applied to and used for the establishment and maintenance of public schools in said district, under the supervision of the governor.

To be used for school purposes.

Jan. 27, 1905.
33 Stat. L., 617.

SEC. 323. That the governor of the District of Alaska shall be ex officio superintendent of public instruction in said district, and as such shall have supervision and direction of the public schools in said district and shall prescribe rules and regulations for the examination and qualification of teachers, and shall make an annual report of the condition of the schools in the district to the Secretary of the Interior.

Governor made superintendent of public instruction. Duties.

Charlton Code, p. 111, sec. 3.

Jan. 27, 1905.
33 Stat. L., 617.

SEC. 324. The clerk of the district court shall have the power, and it shall be his duty, in the division to which he is appointed and in which he resides, upon petition as hereinafter specified, to establish by order in writing a school district at any camp, village, or settlement outside of the limits of any incorporated town, but such school district shall not embrace more than forty square miles of territory nor contain less than twenty resident white children between the ages of six and twenty years. The said petition shall specify as near as may be the location and boundary of the proposed school district, the number of people, the number of families, and the number of children between the ages of six and twenty years resident therein, and such other material facts as tend to show the necessity for the establishment of the school district. Said petition shall be signed by not less than twelve persons of adult age who are citizens of the United States or have declared their intention to become such and who reside within the boundaries of the proposed school district. If the clerk of the court is satisfied that it is necessary and proper to grant such petition, he shall make an order in writing establishing the school district prayed for, describing the same and defining its boundaries, and he shall also in said order appoint three of the petitioners to supervise and give notice of the first election, and shall specify the time and place of the same. The original order shall remain on file in the records of the court, and a copy of the same shall be posted at three public places in the school district at least ten days before the election, and such posting shall be deemed a sufficient notice of such election. All persons qualified to sign said petition shall be qualified to vote at said election. The qualified voters of said school district shall at said election choose by a plurality vote a school board of three members, consisting of a clerk, a treasurer, and a director, who shall, before entering upon the duties of their trust, each take an oath in writing to honorably and faithfully discharge the duties of their office. In case a vacancy in the membership of said board occurs from death, resignation, removal, or other cause, such vacancy may be filled by a special election, upon ten days' notice, called by the remaining members of the board upon the petition of five qualified voters. The treasurer shall be the custodian of the moneys of the school district, and he shall, before entering upon the duties of his office, give his bond to the school district, with sufficient sureties, to be approved by the clerk of the court, and in such sum as he may direct, but not less than twice the amount of money that may come into his hands as treasurer, conditioned that he, the treasurer, will honestly and faithfully disburse and account for all the money that may come into his hands by virtue of his office. Said board shall have the power to build or rent the necessary schoolhouse or schoolroom, to equip the same with the necessary furniture and fixtures, to provide fuel and light, to hire and employ teachers, and in general to do and perform everything that may be necessary for the maintenance of a public

School districts outside of incorporated towns. Petitions for establishing.

Location, boundary, etc., of districts.

Signatures to petition.

Order establishing districts.

Election notice.

School board. Election of.

Oath.

Vacancies.

Treasurer.

Bond.

Schoolhouses, etc.

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Term of board. Annual election. Certificate of election, oath, etc., to be filed. Report. Fund for construction, etc., of schoolhouses. Wages of teachers. Fuel, etc. Apportionment.

school. The members of said board shall hold office for the term of one year and until their successors are elected and qualified. An annual election shall be held each year, after the first election, for the election of members of said board. As soon as the members of said school board have been elected and qualified, they shall send to the clerk of the court and file in his office a certificate of their election under the hand and seal of the judges or supervisors of election, their oaths of office, and the bond of the treasurer, and the clerk of the court shall file said papers and carefully keep them as a part of the files and records of his office, and he shall at once send to the governor of the District of Alaska a certified copy of said papers, together with a certified copy of the order establishing the school district, and the governor shall duly file and preserve the same. The said board, as soon as they have complied with the requirements aforesaid, shall immediately report in writing to the governor the number of children in their school district between the ages of six and twenty years that intend to attend a public school, and the wages per month for which a teacher can be obtained; and after a school has been opened and maintained they shall, at the end of each school term, report to the governor in writing the length of the term, the wages paid the teacher, the total number of pupils in attendance, and the daily average of such attendance at such term. The governor shall assign and set apart to each school district established and organized under the provisions of this section a sum, not less than three hundred dollars nor more than one thousand dollars, in proportion to the number of pupils in the district, for the construction and equipment of a schoolhouse, which sum shall be paid by the Secretary of the Treasury to the treasurer of the school district upon the order and voucher of the governor out of that portion of the said Alaska fund set apart for the establishment and maintenance of public schools. The residue of said portion of said fund, or so much thereof as may be necessary, shall by the governor be apportioned among the several school districts established under the provisions of this section in amounts sufficient for each district to pay the wages of a teacher, together with the expense of fuel and light, for five months' school in each year. And the amounts so apportioned to each school district shall be paid to the treasurer of the district by the Secretary of the Treasury upon the order and voucher of the governor out of the said portion of said fund.

Charlton Code, pp. 112, 113, sec. 5.
Charlton Code, pp. 476, 477, secs. 5985, 5986, 5987, 5988.

# CHAPTER THREE.

## REINDEER SERVICE.

Sec.
325. First appropriation for reindeer service.
326. Appropriation for, and regulations for sale of, reindeer.

Mar. 3, 1893.
27 Stat. L., 590.
Introduction of reindeer.
Immediately available.

SEC. 325. To be expended, under the direction of the Secretary of the Interior, for the purpose of introducing and maintaining in the Territory of Alaska, reindeer for domestic purposes, the sum of six thousand dollars; the same to be immediately available.

Mar. 4, 1907.
34 Stat. L., 1338.
Reindeer.

SEC. 326. For the support of reindeer stations in Alaska, and for the instruction of Alaskan natives in the care and management of the reindeer, nine thousand dollars; and all reindeer owned by the United States in Alaska shall as soon as practicable be turned over to missions in or natives of Alaska, to be held and used by them under

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such conditions as the Secretary of the Interior shall prescribe. The Secretary of the Interior may authorize the sale of surplus male reindeer and make regulations for the same. The proceeds of such sale shall be turned into the Treasury of the United States.

NOTE.—*Annual appropriations from 1893 to June 30, 1912.*

| Fiscal year. | Appropriation. | Statutes at Large. | Fiscal year. | Appropriation. | Statutes at Large. |
|---|---|---|---|---|---|
| 1893-94 | $6,000 | 27-590 | 1904-5 | $25,000 | 33-487 |
| 1894-95 | 7,500 | 28-399 | 1905-6 | 15,000 | 33-1188 |
| 1895-96 | 7,500 | 28-941 | 1906-7 | 9,000 | 34-730 |
| 1896-97 | 12,000 | 29-437 | 1907-8 | 9,000 | 34-1338 |
| 1897-98 | 12,500 | 30-39 | 1908-9 | 15,000 | 35-351 |
| 1898-99 | 12,500 | 30-624 | 1909-10 | 12,000 | 35-990 |
| 1899-1900 | 25,000 | 30-1101 | 1910-11 | 12,000 | 36-744 |
| 1900-1901 | 25,000 | 31-620 | 1911-12 | 12,000 | 36-1420 |
| 1901-2 | 25,000 | 31-1164 | | | |
| 1902-3 | 25,000 | 32-457 | Total | 292,000 | |
| 1903-4 | 25,000 | 32-1120 | | | |

NOTE.—For rules and regulations of reindeer service, and reports on same, apply to Bureau of Education, Department of the Interior.

The reindeer industry in Alaska began in 1892 with the importation of 171 reindeer from Siberia. The importation continued until 1,280 were brought from Siberia. Reindeer raising has become the most important feature of the industrial educational work of the Bureau of Education in Alaska. The district superintendents of schools are also superintendents of reindeer service. June 30, 1910, there was a total of 27,325 reindeer, distributed among 42 herds; 14,933 are owned by natives. Reindeer meat and reindeer skins for clothing are in great demand. The total income of the Eskimo from the reindeer industry during the fiscal year 1909–10 was $24,656.09. This does not include the value of the skins used for clothing and the meat consumed for food by the natives themselves. The first reindeer imported were bought with funds subscribed by benevolent individuals. Since that time the reindeer service has been supported by annual appropriations in the sundry civil bill.

Appropriation fiscal year 1912–13, $5,000.

# CHAPTER FOUR.

## HISTORICAL LIBRARY AND MUSEUM.

Sec.
327. Historical library and museum. Attorneys' admission fees and notaries' commission fees to be used as fund for.
328. Secretary's fees to be used for.

June 6, 1900.
31 Stat. L., 333.

SEC. 327. For each certificate issued to a member of the bar, authorizing him to practice law in the district, a fee of ten dollars shall be paid to the clerk of the court, which shall be by him promptly remitted to the secretary of the district, and at the same time the clerk shall advise the governor of such remittance. For each commission issued to a notary public a fee of ten dollars shall be paid to the secretary of the district. The fees received by the secretary under this section and under chapter seventy-four of Title XIII shall be by him retained and kept in a fund to be known as the district historical library fund. The fund thus collected shall be disbursed on the order of the governor for the purpose of establishing and maintaining the district historical library and museum. The same shall embrace copies of all laws relating to the district, and all papers and periodicals published within the district, and such other matter of historical interest as the governor may consider valuable and appropriate for such collection. The collection shall also embrace such curios relating to the

Attorneys' admission fees.

Notaries' commission fees.

*Post*, p. 447.

—use of fund for district historical library, museum, etc.

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aborigines and the settlers as may be by the governor deemed of historical importance. The collection thus made shall be described by the governor in the annual report of the governor to the Secretatry of the Interior, and shall be by him kept in a secure place and turned over to his successor in office. The secretary of the district and the governor shall each annually account to the Secretary of the Interior for all receipts and disbursements in connection with such historical library and museum.

Designated depository of publications of the Government.

The historical library and museum is hereby made a designated depository of publications of the Government, and shall be supplied with one copy of each of said publications in the same manner as such publications are supplied to other depositories.

Charlton Code, pp. 77, 473, secs. 5971, 5972.

Mar. 3, 1905.
33 Stat. L., 1266.
Alaska Historical Library and Museum.
Secretary's fees to be used for.
Vol. 31, p. 333.

SEC. 328. All fees received by the secretary of the District of Alaska as such secretary, from every source whatsoever, shall be disbursed, on the order of the governor of the District of Alaska, for the benefit of the Alaska Historical Library and Museum, and all such receipts and disbursements shall be accounted for in the manner prescribed in section three hundred and twenty-seven, ante.

Carlton Code, p. 117, sec. 2.

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# TITLE X.

## GAME LAWS.*

(Department of Agriculture and governor.)


| Chap. | | Sec. |
|---|---|---|
| 1. | Protection of game (general law) | 329 |
| 2. | Powers of Department of Agriculture enlarged to include preservation, etc., of game | 341 |
| 3. | Birds, special acts for protection of; bird reservations | 348 |


## CHAPTER ONE.

### PROTECTION OF GAME.

(General Laws.)


Sec.
329. Protection of eggs of cranes, wild ducks, etc.
330. Wanton destruction of game prohibited; "Game" defined; exemptions; killing for food permitted.
331. Open game seasons in different latitudes; Secretary of Agriculture authorized to make rules and regulations. (For amendment see sec. 338.)
332. Killing limited; hunting restrictions.
333. Sales of hides, etc., prohibited.
334. License fee; shipments restricted; game wardens provided for, etc.; governor to make annual report to the Secretary of Agriculture.
335. Shipments of wild game; collections for scientific purposes, etc.; consignments of game; duties of collectors of customs, etc.
336. Penalties for violation; duties of marshals, etc.; arrests, etc.; without warrant.
337. Repeal conflicting acts.
338. Open season for game birds extended.
339. Appropriation for 1909 to be expended under the direction of the governor.
340. Appropriation for fiscal year ending June 30, 1913, to be expended under direction of governor.


June 6, 1900.
31 Stat. L., 332.
Protection of eggs of crane, wild duck, etc.

Sec. 329. No person shall break, take from the nest, or have in possession the eggs of any crane, wild duck, brant, or goose; nor shall any person transport or ship out of said Territory the eggs or the contents of the eggs of any crane, wild duck, brant, or goose; nor shall any person, common carrier or other transportation company carry or receive for shipment such eggs or the contents of said eggs, and any person or company who shall have in possession or receive for shipment or transportation any eggs or the contents of any eggs of the crane, wild duck, brant, or goose shall be guilty of a misdemeanor and upon conviction be punished as provided in this section. Any person or company violating the provisions of this section shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding six months."

Penalty.

Charlton Code, p. 76.

May 11, 1908.
35 Stat. L., 102.
Alaska.
Protection of game in.

SEC. 330. From and after the passage of this act the wanton destruction of wild game animals or wild birds, except eagles, ravens, and cormorants, the destruction of nests and eggs of such birds, or

* NOTE.—The authority granted to the Legislature of Alaska by act of Aug. 24, 1912, does not extend to game laws. See sec. 410, chap. 3, Title XI of this code.



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Vol. 32, p. 327, amended.
Wanton destruction of prohibited. Exceptions.
"Game animals."
"Game birds."
Fur-seal laws not affected.
Killing game for food, etc.
Shipping, etc., prohibited.
Open game seasons in different latitudes.
Ibid.
Animals.
Birds.
*Provisos.*
Caribou on Kenai Peninsula.
Secretary of Agriculture to prescribe rules, etc.

the killing of any wild birds, other than game birds, except eagles, for the purposes of selling the same or the skins or any part thereof, except as hereinafter provided, is hereby prohibited.

"Game defined: The term 'game animals' shall include deer, moose, caribou, mountain sheep, mountain goats, brown bear, sea lions, and walrus. The term 'game birds' shall include water fowl, commonly known as ducks, geese, brant, and swans; shore birds, commonly known as plover, snipe, and curlew, and the several species of grouse and ptarmigan.

"Exemptions: Nothing in this act shall affect any law now in force in Alaska relating to the fur seal, sea otter, or any fur-bearing animal or prevent the killing of any game animal or bird for food or clothing at any time by natives, or by miners or explorers, when in need of food; but the game animals or birds so killed during close season shall not be shipped or sold.

"SEC. 331. Season: That it shall be unlawful for any person in Alaska to kill any wild game animals or birds, except during the season hereinafter provided: North of latitude sixty-two degrees, brown bear may be killed at any time; moose, caribou, sheep, walrus, and sea lions from August first to December tenth, both inclusive; south of latitude sixty-two degrees, moose, caribou, and mountain sheep from August twentieth to December thirty-first, both inclusive; brown bear from October first to July first, both inclusive; deer and mountain goats from April first to February first, both inclusive; grouse, ptarmigan, shore birds, and waterfowl from September first to March first, both inclusive: *Provided*, That no caribou shall be killed on the Kenai Peninsula before August twentieth, nineteen hundred and twelve: *And provided further*, That the Secretary of Agriculture is hereby authorized, whenever he shall deem it necessary for the preservation of game animals or birds, to make and publish rules and regulations prohibiting the sale of any game in any locality modifying the close seasons hereinbefore established, providing different close seasons for different parts of Alaska, placing further restrictions and limitations on the killing of such animals or birds in any given locality, or prohibiting killing entirely for a period not exceeding two years in such locality.

NOTE.—The killing of caribou is prohibited until August, 1914. See regulation 5 of July 1, 1912, under the note of sec. 340.

Killing limited.
Ibid.

SEC. 332. Number: That it shall be unlawful for any person to kill any female or yearling moose or for any one person to kill in any one year more than the number specified of each of the following animals: Two moose, one walrus or sea lion, three caribou, three mountain sheep, three brown bear, or to kill or have in his possession in any one day more than twenty-five grouse or ptarmigan or twenty-five shore birds or waterfowl.

Hunting restrictions.

Guns and boats: That it shall be unlawful for any person at any time to hunt with dogs any of the game animals specified in this act; to use a shotgun larger than number ten gauge, or any gun other than that which can be fired from the shoulder; or to use steam launches or any boats other than those propelled by oars or paddles in the pursuit of game animals or birds.

Sale of hides, etc., prohibited.
Ibid.
*Proviso.*
Game legally killed.

SEC. 333. Sale: That it shall be unlawful for any person or persons at any time to sell or offer for sale any hides, skins, or heads of any game animals or game birds in Alaska, or to sell, offer for sale, or purchase, or offer to purchase, any game animals or game birds, or parts thereof, during the time when the killing of such animals or birds is prohibited: *Provided*, That it shall be lawful for dealers having in possession game animals or game birds legally killed during the open season to dispose of the same within fifteen days after the close of said season.

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Requirements.
License for nonresidents.
Registered guide on Kenai Peninsula.
Ibid.
License fee.
Shipments restricted.
Shipping licenses.
Fees.
Provisos.
Affidavit.
Animals killed prior to May 11, 1908.
Big game.
License for hunting, etc., of.
Use of license fees.
Annual estimates for enforcement of law.

SEC. 334. Licenses: That it shall be unlawful for any nonresident of Alaska to hunt any of the game animals protected by this act, except deer and goats, without first obtaining a hunting license, or to hunt on the Kenai Peninsula without a registered guide, and such license shall not be transferable and shall be valid only during the calendar year in which issued. Each applicant shall pay a fee of one hundred dollars for such license, unless he be a citizen of the United States, in which case he shall pay a fee of fifty dollars. Each license shall be accompanied by coupons authorizing the shipment of two moose if killed north of latitude sixty-two degrees, four deer, three caribou, three mountain sheep, three goats, and three brown bear, or any part of said animals, but no more of any one kind.

A resident of Alaska desiring to export heads or trophies of any of the game animals mentioned in this act shall first obtain a shipping license, for which he shall pay a fee of forty dollars, permitting the shipment of heads or trophies of one moose, if killed north of latitude sixty-two degrees, four deer, two caribou, two sheep, two goats, and two brown bear, but no more of any one kind; or a shipping license, for which he shall pay a fee of ten dollars, permitting the shipment of a single head or trophy of caribou or sheep; or a shipping license, for which he shall pay a fee of five dollars, permitting the shipment of a single head or trophy of any goat, deer, or brown bear. Any person wishing to ship moose killed south of latitude sixty-two degrees must first obtain a special shipping license, for which he shall pay a fee of one hundred and fifty dollars, permitting the shipment of one moose, or any part thereof. Not more than one general license and two special moose licenses shall be issued to any one person in one year: *Provided*, That before any trophy shall be shipped from Alaska under the provisions of this act the person desiring to make such shipment shall first make and file with the customs office at the port where such shipment is to be made an affidavit to the effect that he has not violated any of the provisions of this act; that the trophy which he desires to ship has not been bought or purchased and has not been sold and is not being shipped for the purpose of being sold, and that he is the owner of the trophy which he desires to ship, and if the trophy is that of moose, whether the animal from which it was taken was killed north or south of latitude sixty-two degrees: *Provided further*, That any resident of Alaska prior to September first, nineteen hundred and eight, may without permit or license ship any head or trophy of any of the game animals herein mentioned upon filing an affidavit with the customs office at the port where such shipment is to be made that the animal from which said head or trophy was taken was killed prior to the passage of this act. Any affidavit required by the provisions of this act may be subscribed and sworn to before any customs officer or before any officer competent to administer an oath.

The governor of Alaska is hereby authorized to issue licenses for hunting and shipping big game. On issuing a license he shall require the applicant to state whether the heads or trophies to be obtained or shipped under said license will pass through the ports of entry at Seattle, Washington, Portland, Oregon, or San Francisco, California, and he shall forthwith notify the collector of customs at the proper port of entry as to the name of the holder of the license and the name and address of the consignee. All proceeds from licenses, except one dollar from each fee, which shall be retained by the clerk issuing the license to cover the cost of printing and issue, shall be paid into the Treasury of the United States as miscellaneous receipts; the amount necessary for the enforcement of this act shall be estimated for annually by the Agricultural Department and appropriated for, including

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Report by governor.

the employment and salaries to be paid to game wardens herein authorized. And the governor shall annually make a detailed and itemized report to the Secretary of Agriculture, in which he shall state the number and kind of licenses issued, the money received, which report shall also include a full statement of all trophies exported and all animals and birds exported for any purpose.

Employment of game wardens, etc.

And the governor of Alaska is further authorized to employ game wardens, to make regulations for the registration and employment of guides, and fix the rates for licensing guides and rates of compensation for guiding. Every person applying for a guide license shall, at the time of making such application, make and file with the person issuing such license an affidavit to the effect that he will obey all the conditions of this act and of the regulations thereunder, that he will not violate any of the game laws or regulations of Alaska, and that he will report all violations of such laws and regulations that come to his knowledge. Any American citizen or native of Alaska, of good character, upon compliance with the requirements of this act, shall be entitled to a guide license. Any guide who shall fail or refuse to report any violation of this act, or who shall himself violate any of the provisions of this act, shall have his license revoked, and in addition shall be liable to the penalty provided in section seven of this act, and shall be ineligible to act as guide for a period of five years from the date of conviction.

Guide licenses.

Affidavit of applicant.

Persons entitled to license.

Failure to report violations.

Penalty.
Post, p. 105.

NOTE.—Sec. 7 referred to above in the last paragraph of the section is sec. 336, post, of this title.

SEC. 335. It shall be unlawful for any persons, firm, or corporation, or their officers or agents, to deliver to any common carrier, or for the owner, agent, or master of any vessel, or for any other person, to receive for shipment or have in possession with intent to ship out of Alaska, any wild birds, except eagles, or parts thereof, or any heads, hides, or carcasses of brown bear, caribou, deer, moose, mountain sheep, or mountain goats, or parts thereof, unless said heads, hides, or carcasses are accompanied by the required license or coupon and by a copy of the affidavit required by section five of this act: *Provided*, That nothing in this act shall be construed to prevent the collection of specimens for scientific purposes, the capture or shipment of live animals and birds for exhibition or propagation, or the export from Alaska of specimens under permit from the Secretary of Agriculture, and under such restrictions and limitations as he may prescribe and publish.

Shipments of wild game.
Requirements.

Ibid.

*Ante*, p. 103.

*Proviso.*
Collections for scientific purposes, etc.

Consignments of game.
Duties of collectors of customs, etc.

It shall be the duty of the collector of customs at Seattle, Portland, and San Francisco to keep strict account of all consignments of game animals received from Alaska, and no consignment of game shall be entered until due notice thereof has been received from the governor of Alaska or the Secretary of Agriculture, and found to agree with the name and address on the shipment. In case consignments arrive without licenses they shall be detained for sixty days, and if a license be not then produced said consignments shall be forfeited to the United States and shall be delivered by the collector of customs to the United States marshal of the district for such disposition as the court may direct.

Detention of consignments.

NOTE.—Sec. 5 referred to in this section is sec. 334 of this title.

SEC. 336. Penalties: That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit to the United States all game or birds in his possession, and all guns, traps, nets, or boats used in killing or capturing said game or birds, and shall be punished for each offense by a fine of not more than two hundred dollars or imprisonment not more than three months, or by both such fine and imprisonment, in

Penalties for violation.

Ibid.

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the discretion of the court. Any person making any false or untrue statements in any affidavit required by this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit to the United States all trophies in his possession, and shall be punished by a fine in any sum not more than two hundred dollars or imprisonment not more than three months, or by both such fine and imprisonment, in the discretion of the court.

False affidavits. Penalty.

Enforcement: It is hereby made the duty of all marshals and deputy marshals, collectors or deputy collectors of customs, all officers of revenue cutters, and all game wardens to assist in the enforcement of this act. Any marshal, deputy marshal, or warden in or out of Alaska may arrest without warrant any person found violating any of the provisions of this act or any of the regulations herein provided, and may seize any game, birds, or hides, and any traps, nets, guns, boats, or other paraphernalia used in the capture of such game or birds and found in the possession of said person in or out of Alaska; and any collector or deputy collector of customs, or warden, or licensed guide, or any person authorized in writing by a marshal shall have the power above provided to arrest persons found violating this act or said regulations and seize said property, without warrant, to keep and deliver the same to a marshal or a deputy marshal. It shall be the duty of the Secretary of the Treasury, upon request of the governor or Secretary of Agriculture, to aid in carrying out the provisions of this act.

Duties of marshals, etc.

Arrests, etc., without warrant.

SEC. 337. That all acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Repeal. Ibid.

SEC. 338. That from and after the passage of this act it shall be lawful to kill grouse, ptarmigan, shore birds, and waterfowl from September first to March first, both inclusive, anywhere in the Territory of Alaska.

Mar. 4, 1911.
36 Stat. L., 1360.
Open season for game birds extended.
Vol. 35, p. 103, amended.

NOTE.—For prior act of 1902, repealed or superseded by act of 1908, see vol. 32, Stat. L., p. 327.

SEC. 339. Protection of game in Alaska: For carrying out the provisions of an act approved May eleventh, nineteen hundred and eight, entitled "An act for the protection of game in Alaska, and for other purposes," including salaries, traveling expenses of game wardens, and all other necessary expenses, ten thousand dollars, to be expended under the direction of the governor of Alaska.

Mar. 4, 1909.
35 Stat. L., 990.
Protection of game.
35 Stat. L., 102.

SEC. 340. Protection of game in Alaska: For carrying out the provisions of an act approved May eleventh, nineteen hundred and eight, entitled "An act for the protection of game in Alaska, and for other purposes," including salaries, traveling expenses of game wardens, and all other necessary expenses, fifteen thousand dollars, to be expended under the direction of the governor of Alaska.

Aug. 24, 1912.
37 Stat. L., 459.
Protection of game.
Vol. 35, p. 102.

NOTE.—Appropriation for protection of game in 1910, $10,000 (36 Stat., 745), and for 1911, $15,000 (36 Stat., 1420).

NOTE.—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE.

In accordance with the proviso in section 6 (sec. 335 of this title, act May 11, 1908; 35 Stat. L., 104), authorizing the Secretary of Agriculture to prescribe restrictions and limitations governing the collection and shipment of specimens for scientific purposes, and of live animals and birds for exhibition or propagation, the following regulations are hereby prescribed to take effect October 1, 1908:

1. *Permits.*—Hereafter the Department of Agriculture will not issue permits for the shipment of trophies, including heads or hides of game animals, since the new law requires that such trophies be shipped under regular hunting or shipping licenses issued by the governor of Alaska. Persons desiring to collect specimens of mammals, birds, nests, or eggs in Alaska for scientific purposes must satisfy the department that the specimens are intended for such purposes before permits will be issued, and must forward with the permit, to the collector of customs at Seattle, Portland, or San Francisco a list showing the number

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of each kind of game collected under said permit before the specimens will be released from the custom-house. If several shipments are made under one permit the permit should accompany the first consignment and a list of the game contained in each shipment mailed to the collector of customs at the time of such shipment. Permits will be issued only to regular representatives of public museums, or, under exceptional circumstances, to persons who are known to be making special investigations.

Persons desiring to ship live animals or birds should obtain permits sufficiently in advance of shipment to avoid any delay when the consignments reach the custom-house.

Applicants should be careful to state in each case the region where specimens are to be collected and the probable port and date of shipment. All permits will expire on December 31 of the year of issue, but consignments actually shipped before such expiration may be admitted upon arrival at Seattle, Portland, or San Francisco.

2. *Specimens for scientific purposes.*—Packages containing specimens for scientific purposes offered for shipment must be marked "Specimens for scientific purposes," or words to like effect, and must bear the shipper's name and address. Inattention to these details will render packages subject to examination and detention by officers of the customs. Packages of specimens addressed to the United States Department of Agriculture, the Smithsonian Institution, or the United States National Museum, if properly marked, may be shipped without permit and without examination. Packages addressed to individuals, whether officers of executive departments or not, must be accompanied by permit.

3. *Live animals and birds.*—Live animals or birds for exhibition or propagation may be captured in a close season under permit only, and shipments must be accompanied by permits except as stated in regulation 4. Consignments offered for shipment without permit will not be refused transportation, but may be forwarded to Seattle, Portland, or San Francisco and held there at owner's risk and expense until permits are obtained.

4. *Parks excepted.*—Live animals (not exceeding 10 in one consignment) and live birds (not exceeding 25 in one consignment) may be shipped without permit to the following public zoological parks, if shipped directly to said parks and not to some agent: Golden Gate Park, San Francisco; Lincoln Park, Chicago; Menagerie of Central Park, New York; National Zoological Park, Washington; New York Zoological Society, New York City; Zoological Society, Philadelphia.

Consignments for these parks which exceed the above-mentioned limits must be accompanied by regular permits in all cases.

5. *Reserved rights of department.*—The department expressly reserves the right to examine at Seattle, Portland, or San Francisco any or all specimens, live game animals, or game birds from Alaska, whether shipped as personal baggage or otherwise; to detain, if necessary, at said ports any consignment of game animals or birds or any part thereof not forwarded in conformity with these regulations, and to require the return of the same either to original port of shipment or their delivery to the United States marshal for disposition in accordance with the provisions of sections 6 and 7 of the act of May 11, 1908, 35 Stat. L., 104. Owners and masters of vessels will accept all consignments subject to these conditions. In case of return, all expenses of reshipment will be paid by the vessel transporting the goods from Alaska; and the master of said vessel must file at Seattle, Portland, or San Francisco a customs receipt for all goods returned to Alaska.

6. *Examination of shipments.*—Specimens or live animals and birds arriving at Seattle or San Francisco, not covered by permits or shipped contrary to these regulations, will be held for examination by officers of the customs, promptly reported, and released only upon instructions from the Treasury Department; provided that all goods not released within sixty days after arrival shall be returned to the port of shipment (at the expense of the vessel bringing the same) for disposition in accordance with the provisions of sections 6 and 7 of the act of May 11, 1908, 35 Stat. L., 104.

All previous regulations and all special rulings of the department in conflict with these regulations are hereby revoked.

Approved:

JAMES WILSON,
*Secretary of Agriculture.*

WASHINGTON, D. C., *August 1, 1908.*

### REGULATIONS FOR THE PROTECTION OF GAME IN ALASKA, 1912.

In accordance with the authority conferred on the Secretary of Agriculture under section 2 of the Alaska game law (35 Stat. L., 102), approved May 11, 1908:

"That the Secretary of Agriculture is hereby authorized, whenever he shall deem it necessary for the preservation of game animals or birds, to make and publish rules and regulations prohibiting the sale of any game in any locality

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modifying the close seasons hereinbefore established, providing different close seasons for different parts of Alaska, placing further restrictions and limitations on the killing of such animals or birds in any given locality, or prohibiting killing entirely for a period not exceeding two years in such locality"—

the following regulations, additional to those of August 1, 1908, and superseding those of March 6, 1909, and July 21, 1910, are hereby promulgated, to take effect August 1, 1912:

REGULATION 1.

*Open season for deer.*—The season for killing deer in southeastern Alaska shall be limited to the period from August 15 to November 1, both inclusive.

REGULATION 2.

*Limits.*—The number of deer killed by any one person during the open season shall be limited to 6.

REGULATION 3.

*Sale.*—The sale of deer carcasses in southeastern Alaska shall be suspended until August 15, 1913.

REGULATION 4.

*Killing deer on certain islands.*—The killing of deer on the following islands in southeastern Alaska: Duke Island, near Dixon Inlet; Gravina Island, near Ketchikan; Kruzof Island, west of Sitka; Suemez Island, near Klawak; and Zarembo Island, near Wrangell, is hereby prohibited until August 1, 1914.

REGULATION 5.

*Kenai Peninsula.*—The killing of caribou on the Kenai Peninsula is hereby prohibited until August, 1914.

The shipment of carcasses of moose and sheep for sale, from Seward or other points on the Kenai Peninsula, is hereby prohibited, and no carcasses of said animals shall be accepted for shipment to other points in Alaska unless accompanied by affidavit of the owner that they were not purchased and are not intended for sale.

REGULATION 6.

*Walrus.*—The season for killing walrus in Bering Strait and in Bering Sea north of the mouth of the Kuskokwim River shall be limited to the period from May 10 to July 1, both inclusive. The killing of walrus in Bristol Bay and at points on the coast of Bering Sea, south of the Kuskokwim River, is hereby prohibited until August 1, 1914.

The regulations of March 6, 1909, and July 21, 1910, are hereby revoked.

Approved:

JAMES WILSON,
*Secretary of Agriculture.*

WASHINGTON, D. C., *July 1, 1912.*

REGULATION FOR THE PROTECTION OF DEER IN ALASKA.

In accordance with the authority conferred on the Secretary of Agriculture under section 2 of the Alaska game law (35 Stat. L., 102), approved May 11, 1908:

"That the Secretary of Agriculture is hereby authorized, whenever he shall deem it necessary for the preservation of game animals or birds, to make and publish rules and regulations prohibiting the sale of any game in any locality modifying the close seasons hereinbefore established, providing different close seasons for different parts of Alaska, placing further restrictions and limitations on the killing of such animals or birds in any given locality, or prohibiting killing entirely for a period not exceeding two years in such locality"—

the following regulation, additional to the regulations of August 1, 1908, and superseding those of March 6, 1909, and July 21, 1910, and so much of the regulations of July 1, 1912, as is in conflict herewith, is hereby promulgated, to take effect December 10, 1912.

35223°—S. Doc. 1093, 62-3——16

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REGULATION.

*Killing of deer on certain islands.*—The killing of deer on the following islands in Alaska: Kodiak Island and Long Island, is hereby prohibited until December 10, 1914.

Approved.

JAMES WILSON,
*Secretary of Agriculture.*

WASHINGTON, D. C., *December 9, 1912.*

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# CHAPTER TWO.

## POWERS OF DEPARTMENT OF AGRICULTURE ENLARGED TO INCLUDE PRESERVATION, ETC., OF GAME.


Sec.
341. Purpose of act.
342. Publication of information; Secretary to make regulations, etc.
343. Importation of certain injurious birds and animals forbidden.
344. Transportation of illegally killed game, etc., prohibited.
345. Marking of packages.
346. Penalty for violation.
347. Bodies of animals subject to laws of State into which transported; bird plumage manufactured from feathers of barnyard fowl excepted.


May 25, 1900.
31 Stat. L., 187–189.
Department of Agriculture.
Powers enlarged to include preservation, etc., of game birds, etc.

SEC. 341. That the duties and powers of the Department of Agriculture are hereby enlarged so as to include the preservation, distribution, introduction, and restoration of game birds and other wild birds. The Secretary of Agriculture is hereby authorized to adopt such measures as may be necessary to carry out the purposes of this act and to purchase such game birds and other wild birds as may be required therefor, subject, however, to the laws of the various States and Territories.

Purpose of act.

The object and purpose of this act is to aid in the restoration of such birds in those parts of the United States adapted thereto where the same have become scarce or extinct, and also to regulate the introduction of American or foreign birds or animals in localities where they have not heretofore existed.

Ibid.
Publication of information.

SEC. 342. The Secretary of Agriculture shall from time to time collect and publish useful information as to the propagation, uses, and preservation of such birds.

Regulations.

And the Secretary of Agriculture shall make and publish all needful rules and regulation for carrying out the purposes of this act, and shall expend for said purposes such sums as Congress may appropriate therefor.

Mar. 4, 1909.
35 Stat. L., 1137.
Importing certain injurious birds and animals forbidden.

SEC. 343. The importation into the United States, or any Territory or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of Agriculture may from time to time declare to be injurious to the interests of agriculture or horticulture, is hereby prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of Agriculture: *Provided*, That nothing in this section shall restrict the importation of natural history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of Agriculture may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section.

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Ibid.
Transportation of illegally-killed game, prohibited.

SEC. 344. It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States, to any other State, Territory, or District thereof, any foreign animals or birds, the importation of which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed or shipped in violation of the laws of the State, Territory, or District in which the same were killed, or from which they were shipped: *Provided*, That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the export of which is not prohibited by law in the State, Territory, or District in which the same are captured or killed: *Provided further*, That nothing herein shall prevent the importation, transportation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowls.

Ibid.
Marking of packages.

SEC. 345. All packages containing the dead bodies, or the plumage, or parts thereof, of game animals, or game or other wild birds, when shipped in interstate or foreign commerce, shall be plainly and clearly marked, so that the name and address of the shipper, and the nature of the contents, may be readily ascertained on an inspection of the outside of such package.

Ibid.
Penalty for violations.

SEC. 346. For each evasion or violation of any provision of the three sections last preceding, the shipper shall be fined not more than two hundred dollars; the consignee knowingly receiving such articles so shipped and transported in violation of said sections shall be fined not more than two hundred dollars; and the carrier knowingly carrying or transporting the same in violation of said sections shall be fined not more than two hundred dollars.

May 25, 1900.
31 Stat. L., 188.
Bodies of animals subject to laws of State into which transported.
Ibid.
Bird plumage manufactured from feathers of barnyard fowl.

SEC. 347. All dead bodies, or parts thereof, of any foreign game animals, or game or song birds, the importation of which is prohibited, or the dead bodies, or parts thereof, of any wild game animals, or game or song birds transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such animals or birds had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. This act shall not prevent the importation, transportation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowl.

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## CHAPTER THREE.

### BIRDS; SPECIAL ACTS FOR PROTECTION OF; BIRD RESERVATIONS.

Sec.
348. Hunting, taking eggs, etc., on bird-breeding grounds; punishment for.

Mar. 4, 1909.
35 Stat. L., 1104.
Hunting, taking eggs, etc., on bird-breeding grounds.
Vol. 34, p. 536.
Punishment for.

SEC. 348. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

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BIRD AND MAMMAL RESERVATIONS, DECEMBER 31, 1912.

Bering Sea Reservation, February 27, 1909, St. Michael, Hall, and Pinnacle Islands.
Fire Island Reservation, February 27, 1909, near head of Cook Inlet.
Tuxedni Reservation, February 27, 1909, Chisick and Egg Island, Cook Inlet.
Saint Lazaria Reservation, February 27, 1909, St. Lazaria Island, Sitka Sound.
Yukon Delta Reservation, February 27, 1909, tundra of the Yukon Delta.
Pribilof Reservation, February 27, 1909, Walrus and Otter Islands, Bering Sea.
Bogoslof Reservation, March 2, 1909, Bogoslof Islands, Aleutian Archipelago.
Forrester Island Reservation, January 11, 1912, near southern boundary.
Hazy Islands Reservations, January 11, 1912, in southeastern Alaska.
Chamisso Island Reservation, December 9, 1912, in Kotzebue Sound.

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# TITLE XI.

## POLITICAL CODE.


| Chap. | | Sec. |
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| 1. | Governor, secretary, surveyor general, judiciary, marshal, clerks, commissioners, etc., provided for, and duties defined | 349 |
| 2. | Election of Delegate to Congress provided for, etc | 392 |
| 3. | Creation of Legislative Assembly | 408 |


## CHAPTER ONE.

### GOVERNOR, SECRETARY, SURVEYOR GENERAL, JUDICIARY, MARSHAL, CLERKS, COMMISSIONERS, ETC., PROVIDED FOR, AND DUTIES DEFINED.


Sec.
349. Alaska to constitute a civil and judicial district; seat of government at Juneau.
350. Governor to be appointed, powers and duties of, to appoint notaries public, and report to the President annually, etc.
351. Repeal of act providing that the marshal shall be ex officio surveyor general, etc.
352. Surveyor general, appointment of, provided for.
353. Land districts in Alaska reduced to one.
354. Nome and Fairbanks land districts created.
355. Clerks and marshals at Nome and Fairbanks to be register of land office and receiver of public moneys, respectively.
356. Fees, commissions, and salaries provided for.
357. Surveys at Nome and Fairbanks districts, provided for.
358. Act creating Nome and Fairbanks districts to be in effect July 1, 1907.
359. President to appoint registers and receivers of land offices.
360. Surveyor general to be ex officio secretary of District.
361. Secretary of the Interior to prescribe fees to be paid secretary.
362. Bond of secretary provided for.
363. District courts established; recording divisions created; places and terms of court fixed, etc.
363½. The word "States" shall include Alaska.
363¾. District courts given jurisdiction in bankruptcy proceedings.
364. Jurisdiction of district courts in copyright cases.
365. Jurisdiction of each division of court to extend over the District of Alaska; place of trial may be changed.
366. Judges may appoint clerks and commissioners; duties of commissioners defined; courts may grant writs of habeas corpus.
367. Four clerks provided for; duties defined; may appoint deputies, etc.
368. Four district attorneys authorized; duties defined; salaries fixed; assistants; vacancies provided for.
369. Four marshals authorized; deputies provided for; powers and duties of marshals and deputies defined.
369½. Bond of marshals.
370. Terms of governor, surveyor general, attorneys, judges, and marshals fixed at four years, and salaries provided for.
371. Traveling expenses of governor, surveyor general, marshals, judges, clerks of court, and district attorneys provided for; surveyor general to act in absence of governor.
372. Accounts of commissioners and deputy marshals; quarterly statement to Department of Justice.
373. Attorney general may modify time for transmitting accounts.
374. Schedule of commissioners' fees, repealed; attorney general directed to prescribe new schedule of fees for commissioners acting as ex officio probate judges.




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Sec.
375. Act of March 3, 1909, not to limit or terminate the term of office of present officers in Alaska; officers in third division to serve in fourth; President may change assignment from division to another.
376. Clerks' and commissioners' bonds provided for.
377. Court may establish or change recording districts in the recording divisions. (See note under sec. 363 as to the effect of act of Mar. 3, 1909.)
378. Record books and depository provided for.
379. Provision for recording deeds, contracts, wills, official bonds, etc.
380. Accounting for fees for unrecorded instruments; miners may make regulations for recording claims, etc.; records at Dyea, etc., legalized.
381. Notaries public, residence of.
382. Duties of notaries public defined.
383. Protests of notaries of bills, etc., weight as evidence.
384. Notaries' records to be deposited with clerk of court.
385. Duty of clerk.
386. Bond of notaries.
387. Filing of bond, etc.
388. Liability of notary for misconduct.
389. Fees of officers not otherwise compensated.
390. Use of public buildings for court rooms, etc.; construction of jails authorized; sites; construction of court building authorized; limit; limit number of buildings.
391. Rent of court rooms; Skagway, purchase of certain property authorized in lieu of construction of courthouse and jail.

June 6, 1900.

31 Stat. L., 321, c. 786, s. 1.
Provisions for civil government.
Civil and judicial district.
R. S., 2d Supp., p. 1194, amended.
Vol. 23, p. 24, etc.
Seat of government at Juneau.
*Proviso.*
—to remain temporarily at Sitka.

SEC. 349. The territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Juneau: *Provided*, That the seat of government shall remain at Sitka until suitable grounds and buildings thereon shall be obtained by purchase or otherwise at Juneau.

Carter Code, sec. 1; Charlton Code, sec. 5926.

NOTE.—Act of May 17, 1884 (R. S., 1st Supp., p. 430), provision is made for a civil government for Alaska, and the general laws of the State of Oregon were declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of said act or the laws of the United States. The laws of Oregon continued in force until the passage of the act providing a criminal code in 1899 and the act providing a civil code in 1900.

Prior to 1884 legislation was principally directed to protecting fur seals, and jurisdiction of district courts of California, Oregon, and Washington extended over the Territory. See act of July 27, 1868 (15 Stat. L., 240); act of Mar. 3, 1869 (15 Stat. L., 348); act of July 1, 1870 (16 Stat. L., 189); act of Mar. 5, 1872 (17 Stat. L., 35); act of Mar. 24, 1874 (18 Stat. L., 24); Revised Statutes, chapter 3, p. 342, sections 1954 to 1976, inclusive.

A Territory: The Court of Appeals of the District of Columbia, May 24, 1911, rendered an opinion in Humbolt Steamship Co. *v.* Interstate Commerce Commission, reported in Washington Law Reporter, vol. 39, p. 385, reversing the decision of the Interstate Commerce Commission in the case of Humbolt Steamship Co. *v.* White Pass & Yukon Route et al, (vol. 19, I. C. C. Rep., pp. 81 and 105), and held Alaska to be a Territory of the United States, and cite in support of their conclusion steamer *Coquitlam v.* United States (163 U. S., 346); Binns *v.* The United States (194 U. S. Rep., 486; 2 Alaska Rep., 749); and Rasmussen *v.* The United States (194 U. S. Rep., 516; 2 Alaska Rep., 749).

In the last case cited the Supreme Court says: "It follows, therefore, that the subdivision of the Territory of the United States that has been incorporated into the United States as Alaska and has been provided by Congress with a civil government is a Territory of the United States." See also McFarland et al. *v.* Alaska Perseverance Mining Co. (3d Alaska Rep., 308); United States *v.* Binns (1st Alaska Rep., 553); Allen *v.* Meyers (1st Alaska Rep., 114); Lindenberg *v.* Howard (146 Federal Rept., 467); Nagle *v.* United States (court of appeals, 9th circuit, Oct. term, 1911).

In legislating for Alaska Congress exercised the powers of the General and State Government.

Binns *v.* United States (194 U. S., 486; 2 Alaska Rep., 749); Endleman *v.* United States (86 Fed. Rep., 456); Nelson *v.* United States (30 Fed. Rep., 112); Allen *v.* Meyers (1 Alaska Rep., 114); Ex parte Cooper (143 United States, 472; 12 Sup. Ct., 453).

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Citizenship: Russian subjects remaining in Alaska (art. 3, treaty of 1867) after three years became naturalized citizens of the United States, In re John Minook (2d Alaska Rep., p. 200).

The treaty of 1867 manifested intention to admit inhabitants of ceded Territory to the enjoyment of citizenship and expressed the purpose to incorporate the Territory into the United States. (Rasmussen *v.* U. S. Rep., 197 U. S. Rep., 516; 2 Alaska Rep., 749.)

As to status of uncivilized tribes, see Sah Quah (31 Fed. Rep., 327; 1st Alaska Rep., 691).

The James G. Swan (50 Fed. Rep., 108; 1st Alaska Rep., 775); In re Minook (2 Alaska Rep., 200); United States *v.* Berrigan (2 Alaska Rep., 442).

Boundaries: See treaty of cession of 1867 on pages 69 and 73.

June 6, 1900.

31 Stat. L., 321-322, c. 786, s. 2. R. S., 2d Supp., p. 1194. Act of May 17, 1884, amended. (1st Supp., R. S., p. 430, 23d Stat. L., 24.)

Governor to be appointed. —powers, etc.

SEC. 350. There shall be appointed for the District a governor, who shall reside therein during his term of office and be charged with the interests of the United States Government within the District. To the end aforesaid he shall have authority to see that the laws enacted for the District are enforced and to require the faithful discharge of their duties by the officials appointed to administer the same. He may also grant reprieves for offenses committed against the laws of the District or of the United States until the decision of the President thereon shall be made known. He shall be ex officio commander in chief of the militia of the District and shall have power to call out the same when necessary to the due execution of the laws and to preserve the peace, and to cause all able-bodied citizens of the United States in the District to enroll and serve as such when the public exigency demands; and he shall perform generally in and over said District such acts as pertain to the office of governor of a Territory, so far as the same may be made or become applicable thereto.

Inquiry as to seal-killing operations.

The governor shall from time to time inquire into the operations of any person, company, association, or corporation authorized by the United States, by contract or otherwise, to kill seal or other fur-bearing animals in the District, and any and all violations by such person, company, association, or corporation of the agreement with the United States under which the operations are being conducted, and shall annually report to Congress the result of such inquiries.

Report of governor.

He shall make an annual report, on the first day of October in each year, to the President of the United States, of his official acts and doings, and of the condition of the District, with reference to its resources, industries, population, and the administration of the civil government thereof. And the President of the United States shall have power to review and to confirm or annul any reprieves granted or other acts done by him.

Notaries public.

The governor may appoint and commission one or more notaries public for the District, and appointments of notaries public heretofore made by him are hereby legalized, and all acts performed by them by virtue of their notarial commissions shall be for all purposes as valid as though the governor had at the time full and complete legal authority to appoint and commission them.

Carter Code, sec. 2; Charlton Code, sec. 5927.

NOTE.—The governor, by act of Jan. 27, 1905 (33 Stat. L., 617), is made superintendent of public instruction and duties defined. See title "Education," sec. 323.

The governor, surveyor general, and collector shall constitute a canvassing board. (See act of May 7, 1906; 34 Stat. L., 169; see Political Code, chap 2, sec. 403.)

July 24, 1897.

30 Stat. L., 215. Sec. 8, vol. 23, p. 26, amended.

SEC. 351. That section eight of an act entitled "An act providing a civil government for Alaska" be, and the same is hereby, amended by striking out the words "the commissioner provided for by this act to reside in Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor general of said District."

Charlton Code, p. 51, sec. 1.

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Appointment of surveyor general. Ibid.

SEC. 352. There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor general for the District of Alaska, embracing one surveying district.

Charlton Code, p. 51, sec. 2.

Feb. 14, 1902.

32 Stat. L., 20. To be one land district.

SEC. 353. On and after June first, nineteen hundred and two, the number of land offices and land districts in the District of Alaska is hereby reduced to one, the location of which shall be fixed by the President.

Charlton Code, p. 80.

Mar. 2, 1907.

34 Stat. L., 1232. Nome and Fairbanks districts, Alaska, created. Vol. 30, p. 414, amended.

SEC. 354. There are hereby created two additional land districts, the boundaries of which shall be designated by the President, in the District of Alaska, to be known as the Nome land district and the Fairbanks land district, with the land offices located, respectively, at Nome, Alaska, and Fairbanks, Alaska.

Registers and receivers. Clerks of court and marshals to act. Ibid.

SEC. 355. The clerks of the district courts at Nome and Fairbanks shall respectively be ex officio registers of the land offices at Nome and Fairbanks and the marshals of the said courts at Nome and Fairbanks shall be ex officio receivers of public moneys for the Nome and Fairbanks land districts. Said officers shall perform the several duties of register of the land office and receiver of public moneys for the land districts with all the powers incident to such offices to the same extent as now performed by the register of the land office and the receiver of public moneys at Juneau, Alaska.

Fees, etc. Ibid.

SEC. 356. The said officers shall, in addition to their present compensation as clerk or marshal as provided by law, receive all the fees and commissions allowed by law for their services as registers of land offices and receivers of public moneys for land districts under the land laws: *Provided*, That any fees or commissions in excess of one thousand five hundred dollars per annum received by either such officials shall be paid into the Treasury of the United States: *Provided*, That no other salary than aforesaid shall be paid such registers and receivers.

*Provisos.* Surplus.

No other salary.

Surveys. Ibid.

SEC. 357. The surveyor general of the District of Alaska, under the direction of the Secretary of the Interior, shall furnish the receivers of said land offices a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in said Nome and Fairbanks land districts to meet the requirements thereof, and upon application by any person desiring to have an official survey made the receivers shall furnish a number or numbers for such survey or surveys, together with an order directing a qualified deputy surveyor to make the same, and such application, order, and the fee required to be paid to the surveyor general in the District of Alaska shall be transmitted to the surveyor general: *Provided*, That all surveys thus made shall be approved by the surveyor general as at present.

*Proviso.* Approval.

In effect July 1, 1907. Ibid.

SEC. 358. This act shall take effect and be in force from and after July first, nineteen hundred and seven.

May 14, 1898.

30 Stat. L., 414. Registers and receivers of land offices.

SEC. 359. The President is authorized and empowered to appoint, by and with the advice and consent of the Senate, a register for each land district and a receiver of public moneys therefor, and the register and receiver appointed for such district shall, during their respective terms of office, reside at the place designated for the land office. The registers and receivers of public moneys in the land districts of Alaska shall each receive an annual salary of $1,500 and the fees provided by law, not to exceed, including such salary and fees, a total annual compensation of $3,000 to each of said officers.

Charlton Code, p. 61, sec. 12.

NOTE.—For salaries and fees of registers and receivers of the public land offices at Nome and Fairbanks, see act of March 2, 1907 (34 Stat. L., 1232), being section 356 of this volume.

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June 6, 1900.
31 Stat. L., 322, c. 786, s. 3.
R. S., 2d Supp., p. 1195.
Surveyor general to be ex officio secretary.
—duties, etc.

SEC. 360. The surveyor general of the District shall be ex officio secretary thereof, and as such shall be custodian of the District seal, which shall be provided by the Attorney General. The surveyor general, as ex officio secretary of the District, shall perform the official duties required by law to be performed by the secretary of a Territory of the United States, in so far as applicable to said District, and such other duties as may be required by law.

Carter Code, sec. 3; Charlton Code, sec. 5928.

Mar. 3, 1905.
33 Stat. L., 1265, c. 1497, s. 1.
Alaska.
Fees to be paid secretary.

SEC. 361. In case the law requires or authorizes any service to be performed or any act to be done by the secretary of the District of Alaska, and there is no provision of law requiring the payment of a fee for such service by the person for whose benefit the same is performed, the Secretary of the Interior may prescribe such fees for said service as he may deem proper.

Charlton Code, sec. 5929.

NOTE.—For disposition of fees, see Chap. 4, Title IX (Historical Library and Museum), secs. 327-328.

Bond of secretary.
Ibid., c. 1497, s. 3.

SEC. 362. The secretary of the District of Alaska, before entering upon the duties of said office, shall execute a bond with sufficient sureties, to be approved by the Secretary of the Interior, and in such penal sum as the Secretary of the Interior may prescribe, conditioned upon the safe-keeping, faithful disbursement, and proper accounting for all moneys from whatsoever source which may come into his hands as such secretary.

Charlton Code, sec. 5931.

Mar. 3, 1909.
35 Stat. L., 839-840, c. 269, s. 2.
District courts established.
Four judges authorized.
Salary, residence, etc.
Recording divisions created.
Division No. 1.
Division No. 2.
Act of June 13, 1902, 32 Stat. L., 385, amended.
Division No. 3.

SEC. 363. There is hereby established a district court for the District of Alaska, with the jurisdiction of circuit and district courts of the United States and with general jurisdiction in civil, criminal, equity, and admiralty causes; and four district judges shall be appointed for the District, each at an annual salary of seven thousand five hundred dollars, who shall during their terms of office reside in the divisions of the district to which they may be respectively assigned by the President. The court shall consist of four divisions, which shall also be recording divisions. Division numbered one shall consist of all that part of the District of Alaska lying east of the one hundred and forty-first meridian of west longitude. Division numbered two shall consist of all that territory lying west of a line commencing on the Arctic coast at the one hundred and forty-eighth meridian; thence extending south along the easterly watershed of the Colville River to a point on the Rocky Mountain divide between the headwaters of Colville River on the north and west and the waters of the Chandlar on the south; thence southwesterly along the divide between the waters of the Colville River, the Kotzebue Sound, and Norton Sound on the north and west and the waters of the Yukon on the south to the one hundred and sixty-first meridian of west longitude; thence along said meridian to the Kuskokwim River; thence southwesterly along the center of the channel of said Kuskokwim River to Bering Sea; the said division to include all the islands lying north of the fifty-ninth parallel of north latitude. Division numbered three shall consist of all that territory lying south and west of the line starting on the coast of the Gulf of Alaska at the one hundred and forty-first meridian of west longitude; thence northerly along said meridian to a point due east from Mount Kimball; thence west to summit of Mount Kimball; thence southwesterly along the southerly watershed of the headwaters of Tanana River; thence westerly along the divide between the waters of the Gulf of Alaska on the south and the waters of the Yukon on the north to the summit of Mount McKinley; thence continuing westerly along the divide between the waters of the Gulf of Alaska and Bristol Bay on the south

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and the waters of the Yukon and Kuskokwim on the north to the one hundred and fifty-ninth meridian of west longitude; thence northwesterly to the Kuskokwim River on the one hundred and sixty-first meridian of west longitude; thence southwesterly along the center of said river to Bering Sea; said division to include the Alaska Peninsula, the Aleutian Islands, and all islands along the coast of this district south and west of the said district and all lying south of the

Division No. 4. fifty-ninth parallel of north latitude. Division numbered four shall consist of all that part of the District of Alaska lying east of the

Terms. second division and north of the third division. One general term of

Juneau. court shall be held each year at Juneau, and such additional terms at other places in the first division as the Attorney General may direct.

Nome. One general term of court shall be held each year at Nome, and such additional terms at other places in the second division as the Attorney General may direct. One general term of court shall be held each

Valdez. year at Valdez, and such additional terms at other places in the third division as the Attorney General may direct. One general term of

Fairbanks. court shall be held each year at Fairbanks, and such additional terms at other places in the fourth division as the Attorney General may direct. Each of the judges is authorized and directed to hold such

Special terms. special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court at such times and places in their respective districts as any of them, respectively, may deem expedient, or as the Attorney General may direct; and each shall have

Interpreters, etc. authority to employ interpreters and to make allowances for the necessary expenses of his court and to employ an official court stenographer at such compensation as shall be fixed by the Attorney General. At

Notice of term. least thirty days' notice shall be given by the judge, or the clerk, of the time and place of holding the several terms of the court.

Amends Carter Code, sec. 4; Charlton Code, sec. 5932.

NOTE.—For prior acts providing for district courts, marshals, etc., see act of May 17, 1884 (23 Stat. L., 24); act of June 6, 1900 (31 Stat. L., 221); act of June 13, 1902 (32 Stat. L., 385, c. 1082).

History of the jurisdiction of courts prior to the act of 1884, see sec. 7 of the act of July 27, 1868 (15 Stat. L., 241); also section 7 of the act of July 1, 1870 (16 Stat. L., 182), being section 1957 of the Revised Statutes. The foregoing sections provide for jurisdiction of the United States district courts of California, Oregon, and Washington.

Prior acts providing for recording divisions, see act June 6, 1900 (31 Stat. L., 326); act of June 13, 1902 (32 Stat. L., 385).

The district court is invested with powers of district and circuit courts of the United States, as well as powers to enforce laws of the District of Alaska. (McAllister *v.* United States, 141 U. S. Rep., 174–179, decided May 21, 1891.)

The district court is to be regarded as the supreme court of the Territory within the meaning of the act of March 3, 1891, and its decrees are subject to review by the circuit court of appeals. (*The Coquitlam*, 163 U. S., 346, May 18, 1896, 1 Alaska Rep., 827; U. S. *v.* Beasley, 2 Alaska Rep., 93, 96; Gavigan *v.* Crary, 2 Alaska Rep., 370, 378.)

The presumption of law is that a special term of court held, was duly convened and legal notice given. (Stockslager *v.* United States, 116 Fed. Rep., 590, circuit court of appeals, May 5, 1902.)

Admiralty jurisdiction: Ex parte Cooper (143 U. S. Rep., 472; 36 L. Ed., 232; 1 Alaska Rep., 686). Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43). *The Nugget* (1 Alaska Rep., 202). Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494; 2 Alaska Rep., 639). *The Fideliter* (1 Saw. Rep., 153; 1 Alaska Rep., 816).

Suit in personam: Spaulding *v.* Alaska Com. Co. (1 Alaska Rep., 497).

Seamen's wages: *The Independence* (1 Alaska Rep., 591). Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494; 2 Alaska Rep., 637). *The Ocean Spray* (4 Saw. Rep., 105; 1 Alaska Rep., 817).

Derelicts: *The Canada* (D. C.; 92 Fed. Rep., 196; 1 Alaska Rep., 687).

Maritime liens: The schooner *Arthur B.* (1 Alaska Rep., 403). *The Ocean Spray* (4 Saw. Rep., 105; 2 Alaska Rep., 817). Miners Co-Operative Assn. *v.* steamer *Monarch* (2 Alaska Rep., 383). Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494; 2 Alaska Rep., 639). *The Garonne* (160 Fed. Rep., 487). *The Arthur B.* (1 Alaska Rep., 353).

Failure of voyage: The schooner *Arthur B.* (1 Alaska Rep., 403).

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Suit for unearned freight: *The Skookum* (1 Alaska Rep., 394).

Salvage: The schooner *Arthur B.* (1 Alaska Rep., 403). *The Arthur B.* (1 Alaska Rep., 353. *The City of Seattle* (1 Alaska Rep., 471). *The Catherine Sudden* (1 Alaska Rep., 607).

Stipulation for release: *The City of Seattle* (1 Alaska Rep., 471). U. S. *v.* Mosely (D. C.; 8 Fed. Rep., 688; 1 Alaska Rep., 689). Allison *v.* steamer *Lavelle Young* (2 Alaska Rep., 104).

Forfeiture for violation of sealing law (see title, "Fish and Fisheries," chap. 4, "Seal Fisheries," and note): U. S. *v.* the Japanese schooner *Kensei Maru* (3 Alaska Rep., 627).

Appeals: See Code of Civil Procedure, chap. 51, and notes.

July 1, 1898.
30 Stat. L., 544.

SEC. 363⅓. The words and phrases used in this act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia.

The word "States" shall include Alaska.
R. S., 2d Supp., p. 843.

Charlton Code, p. 62.

Creation of courts of bankruptcy.
Ibid.
R. S., 2d Supp., p. 845.

SEC. 363⅔. That the courts of bankruptcy as hereinbefore defined, viz, the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held.

—Jurisdiction.

Charlton Code, p. 62.

NOTE.—See act of July 1, 1898 (30 Stat. L., 544), and amendments thereto, to establish a uniform system of bankruptcy throughout the United States.

Mar. 4, 1909.
35 Stat. L., 1084.

SEC. 364. All actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

Courts given cognizance of copyright cases.
R. S., sec. 4970, p. 960, amended.

June 6, 1900.
31 Stat. L., 323, c. 786, s. 5.
R. S., 2d Supp., p. 1196.

SEC. 365. The jurisdiction of each division of the court shall extend over the District of Alaska, but the court in which the action is pending may, on motion, change the place of trial in any action, civil or criminal, from one place to another place in the same division or to a designated place in another division in either of the following cases:

Jurisdiction of divisions, etc.
When place of trial may be changed.

First. When there is reason to believe that an impartial trial can not be had therein;

Second. When the convenience of witnesses and the ends of justice would be promoted by the change;

Third. When from any cause the judge is disqualified from acting; but in such event, if the judge of another division will appear and try the action, no change of place of trial must be made;

Fourth. By the court, on its own motion, when, considering available means of travel, it appears that the defendant will be put to unnecessary expense and inconvenience if summoned to defend in the place or division in which the action has been commenced; and when it appears to the satisfaction of the court, or judge thereof, that an action has been commenced in a place or division remote from the residence of the defendant for the purpose of causing unnecessary expense or inconvenience, the place of trial shall be changed at the cost of the plaintiff, and such costs shall not be recovered from the defendant.

In any criminal prosecution the court shall change the place of trial where it appears to the satisfaction of the court that the defendant will not be prejudiced thereby and that the United States will be put to unnecessary expense in such criminal prosecution if the transfer is not made.

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Carter Code, sec. 5; Charlton Code, sec. 5933.

NOTE.—Grand jury of one district has no jurisdiction to return indictment against person accused of committing crime in another. (U. S. *v.* Beasley, 2 Alaska Rep., 93, decided May 17, 1903. See also vol. 24, Cent. Digest, grand jury, sec. 63.)

Court has no authority to grant change of venue in civil cases except as provided by statute: Com. Nat. Bank *v.* Davidson et al. (24 Oreg. Rep., 261; 22 Pac. Rep., 394, decided July 1, 1889).

Change of venue discretionary with court in criminal cases when showing controverted: State *v.* Humphrey (43 Oreg., 44; 70 Pac. Rep., 824). State *v.* Pomeroy (30 Oreg. Rep., 16; 46 Pac. Rep., 797). State *v.* Armstrong (43 Oreg. Rep., 207; 73 Pac. Rep., 1022).

Duty of court to grant change of venue where showing made of prejudice of inhabitants: State *v.* Olds (19 Oreg. Rep., 347; 24 Pac Rep., 394; July, 1890).

Objection that suit not tried in proper county too late after trial on merits: Johnston *v.* Wadsworth (24 Oreg., 494; 34 Pac. Rep., p. 13).

Justice of the peace authorized to grant change of venue under secs. 2078 and 2131, Oregon Code: Rockwood *v.* State et al. (24 Oreg. Rep., 261; 33 Pac. Rep., 674).

June 6, 1900.

31 Stat. L., 324, c. 786, s. 6.

Appointment, etc., of clerks and commissioners.

SEC. 366. The respective judges of the court shall appoint, and at pleasure remove, clerks and commissioners in and for the district, who shall have the jurisdiction conferred by law in any part thereof, but who shall during their terms of office, each reside at the place in the district designated in the respective orders of appointment.

Duties of commissioners, etc. R. S., 2d Supp., p. 1196.

The commissioners shall be ex officio justices of the peace, recorders, and probate judges, and shall perform all the duties and exercise all the powers, civil and criminal, imposed or conferred on the United States commissioners by the general laws of the United States and the special laws applicable to the district.

They shall also have power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, which writs shall be made returnable before a district judge, and like proceedings shall be had thereon as if the same had been granted by the judge under the general laws of the United States in such cases. The commissioners shall also have the powers of notaries public, and shall keep a memorandum of all deeds and other instruments of writing acknowledged before them and relating to the title to or transfer of property within the district, which memorandum shall be subject to public inspection. And all records of instruments of writing hitherto made by any United States commissioner in the district of Alaska are hereby declared to be public records of such district and shall have the same force and effect as if recorded in conformity with the provisions of this act.

—records of.

The commissioners shall also keep a record of all fines and forfeitures received by them, and shall pay over the same quarterly to the clerk of the division of the district court in which they were appointed.

Carter Code, sec. 6; Charlton Code, sec. 5934.

NOTE.—For prior act, see sec. 4 of act of May 14, 1884 (23 Stat. L., 24, 1st Supp., R. S., 431). For prior act providing for commissioners, see act of June 4, 1897 (30 Stat. L., 56). Sylvester's admr. *v.* Wilson's admrs. (2 Alaska Rep., 333).

Office of the United States commissioners as now constituted, created by sec. 19, act of May 28, 1896 (29 Stat. L., 185). No powers expressly conferred by this act; therefore powers must be found in laws providing for commissioners of circuit court. These powers are defined by Justice Field in U. S. *v.* Schumann (7 Saw. Rep., 439; 2 Abb., U. S., 526; Fed. cases No. 16235, cited In re Sung Tuck, 126 Fed. Rep., 386). See cases cited, p. 397.

In re Perkins (100 Fed. Rep., 950–953). U. S. *v.* Hardin et al. (10 Fed. Rep., 82). Cheney *v.* Alaska, etc., Mining Co. (148 Fed. Rep., 808). U. S. *v.* Alfred (155 U. S. Rep., 591). Compiled Statutes, 1901, p. 499. 2 Fed. Stat. Ann., p. 323, and notes. McFarland *v.* Alaska Perseverance Mining Co. (3 Alaska Rep., 325).

Jurisdiction and duties in election: See Political Code, chap. 2, secs. 396 and 397, act of May 7, 1906.

Seal to be prescribed by Attorney General: Act of June 28, 1906 (34 Stat. L., 546, c. 3573).

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Appointment of road overseers by: See title "Transportation," chap. 3, "Roads and Trails," sec. 33.

Attorney General to prescribe fees: See sec. 374, act of May 3, 1909.

Bonds of: See sec. 376, 1; quarterly statements to Department of Justice, sec. 372.

Duties as probate judges and justices of the peace: See civil and criminal codes and codes of civil and criminal procedure.

Above section and sec. 1530, Code of Civil Procedure, provided that commissioners shall be ex officio justices of the peace and probate judges: Linge, admr., *v.* Alaska Treadwell Co. (3 Alaska Rep., 19, 20, and 24). Sylvester, admr., *v.* Wilson, admr. (2 Alaska Rep., 325).

Authority to issue subpœnas for witnesses: U. S. *v.* Beavers (125 Fed. Rep., 778, and cases cited). Duties as recorders, see title, "Public lands."

Mar. 3, 1909.

35 Stat. L., 840–841, c. 786, s. 3.

Four clerks authorized.

Duties.

Receipt, etc., of fees, etc.

Act of June 6, 1900, 31 Stat. L., 324, amended.

Accounting.

*Proviso.*

Moneys not available for court expenses.

Deposit of regular balances.

Other duties, etc.

Deputies, etc.

Deputy clerks' duties.

SEC. 367. Four clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and during his term of office shall reside at such place in the division as the Attorney General may direct. Each clerk shall, in his division of the District, perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the District of Alaska. He shall preserve copies of all laws applicable to the District and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also collect and receive all moneys arising from the fees of his office, from licenses, fines, forfeitures, judgments, or on any other account authorized by law to be paid to or collected by him, and shall apply the same, except the money derived from licenses, to the incidental expenses of the proper division of the district court and the allowance thereof as directed in written orders, duly made and signed by the judge, and shall account for the same in detail, and for any balances on account thereof, under oath, quarterly, or more frequently if required, to the court, the Attorney General, and the Secretary of the Treasury: *Provided*, That moneys accruing from violations of the customs laws, civil customs cases, or internal-revenue cases, moneys, not including costs, accruing from civil post-office suits, fines in criminal cases for violations of the postal laws, the net proceeds of sales of public property under section thirty-six hundred and eighteen, Revised Statutes as amended, and any other moneys the disposition of which is otherwise specially provided for by law, shall not be available for the expenses of the court, but shall be paid over or deposited as provided by law for other districts. And "after all payments ordered by the judge shall have been made, any balances remaining in the hands of the clerk shall be by him deposited to the credit of the United States and be covered into the Treasury of the United States at such times and under such rules and regulations as the Secretary of the Treasury may prescribe. The clerk shall be ex officio recorder of instruments as hereinafter provided and also register of wills for the division, and shall establish secure offices for the safekeeping of his official records where terms of his division of the court are held. He may appoint necessary deputies and employ other necessary clerical assistance to aid him in the expeditious discharge of the duties of his office, with the approval and at compensation to be fixed by the court or judge, subject to the approval of the Attorney General. Any person so appointed or employed shall be paid by the clerk on the order of the judge, as other court expenses are paid."

Each deputy clerk has the power to perform any act or duty relating to the clerk's office that his principal has, and his principal is responsible for his conduct and for all money received by him in his official capacity.

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Amends Carter Code, sec. 7; Charlton Code, secs. 5935 and 5930.

NOTE.—Duties relative to establishing school districts: See act of July 27, 1905, title "Education," chap. 2, sec. 324.

Disposition of license money: See act May 14, 1906, title "Alaska fund," secs. 305 and 306.

To turn over money collected in incorporated town to treasurer: In re C. E. Wynn-Johnson (1 Alaska Rep., 633). Pacific Steam Whaling Co. *v.* U. S. (187 U. S. Rep., 447; 2 Alaska Rep., 697). Pacific Coast S. S. Co. *v.* U. S. (187 U. S. Rep., 454; 2 Alaska Rep., 697).

Action will not lie against clerk in his official capacity to recover money received by him in such capacity: Hill, clerk, Dist. of Alaska, *v.* Vallentine (164 Fed. Rep., 328). See vol. 10, Cent Digest, "Clerks of courts," sec. 117.

Mar. 3, 1909.

35 Stat. L., 841, c. 269, s. 4.

Four district attorneys authorized. Duties.

Salaries. Act of June 6, 1900, 23 Stat. L., 24, 1st Supp., R. S., 430, and 31 Stat. L., 324, amended.

Assistants.

Vacancies.

SEC. 368. Four district attorneys shall be appointed for the District, one of whom shall be assigned to each division and shall reside at such place in the division as the Attorney General shall direct. They shall each perform the duties required to be performed by United States district attorneys in other districts, and such other duties as may be required by law; and they shall each receive a salary of five thousand dollars per annum and shall not while in office accept retainers or engage in any other law business in the District than that pertaining to the duties of their office. The Attorney General may, upon the recommendation of the district attorney, appoint and at pleasure remove one or more assistant district attorneys and one or more clerical assistants, who shall receive such compensation as the Attorney General may fix, to be paid as other assistant United States district attorneys and clerical assistants are paid. In the case of the death or disability of a district attorney the judge may appoint a suitable person to fill the office until his successor is appointed and qualified or until the disability is removed.

Amends Carter Code, sec. 8; Charlton Code, sec. 5936.

NOTE.—District attorney possesses no absolute power to dismiss a criminal charge pending the examination of accused before a commissioner. His duty is to see that evidence against accused is properly presented, and has same duty before a grand jury. He can not prevent the consideration of a charge by declaring Government will not prosecute.

After indictment is found and until trial commenced his authority may be said to be absolute. He can then abandon prosecution at his pleasure. He can enter a nolle prosequi even without the consent of the court. He can do this before the arraignment of accused, or he may do it after issue joined. He can do it at any time until jury is impaneled, and after trial is commenced he can do it with consent of defendant: U. S. *v.* Schumann (7 Saw., 439; 2 Abb. U. S., 526; Fed. Cases, No. 16235).

A district attorney has no authority to direct a marshal not to execute a warrant issued by a commissioner: U. S. *v.* Scroggins (3 Woods, 529, cited with approval in U. S. *v.* Ebbs, 4th Hughes, p. 478). U. S. *v.* Ebbs (10 Fed. Rep., 369–373, and 49 Fed. Rep., 149–152).

Four marshals authorized. Vol. 31, p. 324, amended.

Deputies. Act of June 6, 1900 (31 Stat. L., 324–325), as amended by act of Mar. 3, 1909 (35 Stat. L., 841), c. 269, s. 6.

Office deputies, clerical assistance, etc. R. S., 2d Supp., p. 1197.

SEC. 369. Four United States marshals shall be appointed for the District, one of whom shall be assigned to each division, and shall reside at such place in the division as the Attorney General shall direct.

Each marshal shall have authority and be required to appoint, subject to the approval of the Attorney General, such deputy marshals as he may deem necessary for the efficient execution of the law and the orders of the court and of the commissioners appointed as herein provided.

That when, in the opinion of the Attorney General, the public interest requires it, he may, on the recommendation of the marshal, which recommendation shall state the facts as distinguished from conclusions, showing necessity for the same, allow the marshals to employ necessary office deputies and clerical assistance, upon salaries to be fixed by the Attorney General, from time to time, and paid as other officers of the court are paid. When any of such office deputies is engaged in the service or attempted service of any writ, process, subpœna, or other order of the court, or when necessarily absent from

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the place of his regular employment upon official business, he shall be allowed his actual traveling expenses only, and his necessary and actual expenses for lodging and subsistence, not to exceed four dollars per day, and the necessary actual expenses in transporting prisoners, including necessary guard hire; and he shall make and render accounts thereof as provided for.

Powers, etc., of marshals.

Each marshal shall have the general authority and powers and be subject to the obligations of United States marshals in the States and Territories. He shall be the executive officer of the court, and charged with the execution of all processes thereof and with the transportation and custody of prisoners and insane persons, and he shall be ex officio keeper of the jails and penitentiaries of the division of the District to which he may be assigned, and shall be responsible on his official bond for the acts of all deputy marshals appointed by him. In case of the death of a marshal the district judge shall appoint a suitable person to fill the vacancy until his successor is appointed and qualified. The persons so appointed shall give such bonds as the court may require.

Sec. 6 of act of June 17, 1884 (23 Stat. L., 24), repealed by implication.

—care of insane.

The marshal shall deliver persons duly adjudged insane in the District to the authorities of such asylum or sanitarium as the governor, with the approval of the Secretary of the Interior, may designate, and for the service of process in connection with and the guarding and transportation of the insane he shall be compensated as in the case of prisoners.

Powers of deputy marshals.

The deputy marshals shall be ex officio constables and executive officers of the commissioners herein provided for, and shall have the powers and discharge the duties of United States deputy marshals, and also those of constables, under the laws of the United States applicable to said District.

Amends Carter Code, sec. 9; Charlton Code, sec. 5937.
U. S. *v.* Beasly (2 Alaska Rept., 97).

Jan. 22, 1902.

32 Stat. L., 2.
Marshal's bond.
Vol. 30, p. 1336.

Sec. 369½. That section four hundred and fifty-nine of the act of March third, eighteen hundred and ninety-nine, be amended so as to read: That whenever the business of the courts in any division of the District of Alaska shall make it necessary, in the opinion of the Attorney General, for the marshal for said division to furnish greater security than the official bond now required by law, a bond in a sum not to exceed seventy-five thousand dollars shall be given when required by the Attorney General, who shall fix the amount thereof.

Charlton Code, p. 80.

Note.—Section 783 of the Revised Statutes fixes the amount of the bonds of all marshals not specially provided for at $20,000.

Duties as member of board of control of hospitals for insane: See act of June 25, 1910 (36 Stat. L., 852); see Civil Code, chap. 39, sec. 831.

Deputy marshals have power to serve process issued by United States Commissioners of Alaska, exercising powers of the justices of the peace. Marshal liable for acts of deputies: Holden *v.* Williams, marshal (75 Fed. Rep., 798).

Order of court allowing account for disbursements for witness fees, etc., of marshal, not reviewable in action against the marshal: U. S. *v.* Hillyer et al. (58 Fed. Rep., 678; 1 Alaska Rep., 47).

Marshal entitled to fees for guarding prisoners where verbally committed to his care by United States Commissioner: U. S. *v.* Ebbs (49 Fed. Rep., 149).

Appointment of officers; terms; compensation, etc.
June 6, 1900, 31 Stat. L., 325, c. 786, s. 10; 2 Supp., 1198.
Mar. 3, 1909, 35 Stat. L., 839, c. 269, ss. 2, 4.
June 17, 1910, 36 Stat. L., 500, c. 297.

Sec. 370. The governor, surveyor general, attorneys, judges, and the marshals provided for in this *chapter* shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause. The officers so appointed shall severally be entitled to receive annual compensation as follows: The governor, the sum of seven thousand dollars; the surveyor general and ex

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officio secretary of the district, as full compensation, four thousand dollars; each judge, seven thousand five hundred dollars; each marshal, four thousand dollars; each clerk, three thousand five hundred dollars; each district attorney, five thousand dollars; the salaries to be payable from the Treasury of the United States. as like officers are paid in other districts.

Amends Carter Code, sec. 10; Charlton Code, sec. 5938.

Under the power conferred upon the President under sec. 1768, R. S., he had authority to remove district judge of Alaska, appointed under act of May 17, 1884, and to appoint another in his place: McAllister *v.* U. S. (141 U. S. Rep., 174). In re C. E. Wynn-Johnson (1 Alaska Rep., 633).

Traveling expenses.
June 6, 1900, 31 Stat. L., 326, c. 786, s. 10.
R. S., 2d Supp., p. 1199.

SEC. 371. The governor, surveyor general, marshals, judges, clerks of court, and district attorneys shall, in addition to their salaries, be paid their actual traveling and subsistence expenses when traveling in the discharge of their official duties. Accounts for such expenses shall be rendered and paid as are accounts of judges, marshals, clerks, and district attorneys for like expenses in other districts.

Surveyor general to act in absence of governor.

In case of the death, removal, resignation, or absence of the governor from the district, the surveyor general as ex officio secretary of the district shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

Carter Code, sec. 10; Charlton Code, sec. 5940.

Mar. 3, 1909.
35 Stat. L., 84, c. 269, s. 5.
Accounts of commissioners and deputy marshals.
Vol. 31, p. 326, sec. 11, amended.
Quarterly statement to Department of Justice.
Excess of fees to clerk.

SEC. 372. An accurate detailed account of all fees earned and expenses incurred by commissioners and deputy marshals shall be prepared in duplicate quarterly, duly verified by the oath of the commissioner or deputy marshal rendering the account, and forwarded to the clerk for the proper division of the district court and approved by the judge thereof, if found to be in accordance with law. After approval by the judge the original of each such account shall be forwarded by the clerk to the Department of Justice for revision and the duplicate filed in the court. All net fees earned in excess of the sum of three thousand dollars per calendar year or in excess of that rate for a less period, by any commissioner or deputy marshal, shall be annually paid to the clerk of the proper division of the court to be available for incidental expenses of the district court of the proper division, such payment of such incidental expenses to be accompanied by a verified detailed statement of said clerk.

Amends Carter Code, sec. 11; Charlton Code, sec. 5941.

Mar. 3, 1909.
35 Stat. L., 842.
Modification of time for transmitting accounts, allowed.

SEC. 373. When, in the opinion of the Attorney General, it will be impossible for the accounts of any court offical or other person whose accounts pertain to the United States courts in Alaska to be transmitted to the Department of Justice within the period prescribed by law, the Attorney General may modify, as he may deem proper, any requirement of law concerning the time when such accounts shall be rendered and transmitted.

Mar. 3, 1909.
35 Stat. L., 842.
Schedule of commissioners' fees repealed.
Vol. 31, p. 454, repealed.
Schedule to be prepared.

SEC. 374. That section sixteen hundred and three of chapter eighty, title two, of said act, approved June sixth, nineteen hundred, be, and the same is hereby, repealed, and the Attorney General is authorized and directed to prescribe a schedule of fees for the services rendered by the United States commissioners acting as ex officio probate judges.

Mar. 3, 1909.
35 Stat. L., 842.
Terms of present officers not affected.
Officers in third division.

SEC. 375. Nothing in this act shall be construed to limit or terminate the term of office of any of the judges, district attorneys, or marshals now serving in Alaska; but each shall serve out the term for which he was appointed unless sooner removed. The judge, district attorney, and marshal now serving in the third division of said district shall hereafter have their residence and hold their respective

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offices in the fourth division created by this act: *Provided*, That the President may, in his discretion, change the assignment of any of said officers from one division to another.

*Proviso.* Assignments.

June 6, 1900. 31 Stat. L., 326, c. 786, s. 13. R. S., 2d Supp., p. 1199.

Clerks' bonds.

SEC. 376. The clerks of the court shall each, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the Secretary of the Treasury, or the court, or a judge thereof, in the penalty of twenty thousand dollars, for the faithful performance of his official duties, and file the same with the Attorney General; and each commissioner shall, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the court, or a judge thereof, in the penalty of one thousand dollars, for the faithful performance of his official duties, and file the same with the clerk, who shall send a certified copy thereof to the Attorney General.

Commissioners' bonds.

Carter Code, sec. 12; Charlton Code, sec. 5942.

NOTE.—For authority of Attorney General to increase bonds of clerks and marshals, see sec. 2568 of Code of Criminal Procedure.

June 6, 1900. 31 Stat. L., 326, c. 786, s. 13. R. S., 2d Supp., p. 1199.

Recording districts.

SEC. 377. At any regular or special term an order may be made by the court establishing one or more recording districts within the recording division under the supervision of such division of the court and defining the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries thereof can be readily determined.

—recorder.

The order establishing a recording district shall designate a commissioner to be ex officio recorder thereof, and shall also designate the place where the commissioner shall keep his recording office within the recording district: *Provided*, The clerk of the court shall be ex officio recorder of all that portion of the recording division under the supervision of his division of the court not embraced within the limits of a recording district established, bounded, and described therein as authorized by this act, and when any part of the division for which a clerk has been recording shall be embraced in a recording district, such clerk shall transcribe that portion of his records appertaining to such district and deliver the same to the commissioner designated as recorder thereof.

*Proviso.* —of what clerk of the court shall be ex officio recorder.

Change of districts, etc.

Whenever it appears to the satisfaction of the court that the public interests demand, or that the convenience of the people require, the court may change or modify the boundaries or discontinue a recording district or change the location of the recording office, or remove the commissioner acting as ex officio recorder, and appoint another commissioner to fill the office.

Carter Code, sec. 13; Charlton Code, sec. 5944.

NOTE.—See note under sec. 363 as to change and number of recording divisions.

June 6, 1900. 31 Stat. L., 327. R. S., 2d Supp., p. 1200.

Record books, etc.

SEC. 378. The clerk as ex officio recorder must procure such books for records as the business of his office requires and such as may be required by the respective commissioners designated as recorders in his division of the court, but orders for the same must first be obtained from the court or the judge thereof. The respective officers acting as ex officio recorders shall have the custody and must keep all the books, records, maps, and papers deposited in their respective offices, and where a recorder is removed or from any cause becomes unable to act, or a recording district is discontinued, the records and all books, papers, and property relating thereto shall be delivered to the clerk or such officer or person as the court or judge thereof may direct.

The record books procured by the clerk as herein provided shall be paid for by him on the order of the court out of any moneys in his hands, as other court expenses are paid.



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June 6, 1900.
31 Stat. L., 327, c. 786, s. 15. R. S., 2d Supp., p. 1200.
What recorded.

SEC. 379. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney General, record separately, in large and well-bound separate books, in fair hand:

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property.

Second. Certificates of marriage and marriage contracts and births and deaths.

Third. Wills devising real estate admitted to probate.

Fourth. Official bonds.

Fifth. Transcripts of judgments which by law are made liens upon real estate.

Sixth. All orders and judgments made by the district court or the commissioners in probate matters affecting real estate which are required to be recorded.

Seventh. Notices and declaration of water rights.

Eighth. Assignments for the benefit of creditors.

Ninth. Affidavits of annual work done on mining claims.

Tenth. Notices of mining location and declaratory statements.

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others:

*Proviso.* Mining claims.

*Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated.

Where instruments recorded.

Carter Code, sec. 15; Charlton Code, sec. 5946.

NOTE.—Location of mining claims not required by statute to be recorded, but when one is made it prescribes what it shall contain. Meydenbauer *v.* Stevens (78 Fed. Rep., 787, decided Feb. 13, 1897). McIntosh *v.* Price et al. (121 Fed. Rep., 716, decided Feb. 2, 1903).

Description of mining claims construed liberally: R. S., sec. 2324, act. 1901. Smith *v.* Cascaden et al. (148 Fed. Rep., 792, Nov. 1, 1906, Ct. Appeals, 9th circuit). Butler *v.* Goodenough Mining Co. (1 Alaska Rep., p. 253). Steen *v.* Wild Goose M. & T. Co. (1 Alaska Rep., p. 255). Windmuller *v.* Clarkson (2 Alaska Rep., p. 298). Bulette *v.* Dodge (2 Alaska Rep., p. 427). Cascaden *v.* Dunbar (2 Alaska Rep., pp. 408, 415). Charlton *v.* Kelley (2 Alaska Rep., p. 532). Redden *v.* Harlan (2 Alaska Rep., p. 402). Overgaard *v.* Westerberg (3 Alaska Rep., pp. 168, 171, 179). Cascaden *v.* Bortolis (3 Alaska Rep., pp. 200, 204). McFarland *v.* Alaska Perseverance Mining Co. (3 Alaska Rep., p. 325). Cook *v.* Klonos (164 Fed. Rep., p. 529; 90 C. C. A., 403). Fuller *v.* Harris (29 Fed. Rep., p. 814).

Where a deed of an undivided interest in a mining claim was neither witnessed nor acknowledged as required by Oregon Code, extended to Alaska by act of May 17, 1884, such deed was not entitled to record, and record thereof not constructive notice.

Alaska Exploration Co. *v.* Northern Mining & Trading Co. (152 Fed. Rep., p. 145; C. C. A., 9th ct., Mar. 4, 1907).

Act of June 6, 1900, c. 786, s. 15 (31 Stat. L., 327), providing for recording instruments, including notice of mining claims, if filed within 90 days from discovery, does not require, but merely permits, recording such notices, and failure to record does not forfeit rights: Sturtevant *v.* Vogel (167 Fed. Rep., p. 448; C. C. A., 9th ct., Feb. 1, 1909).

June 6, 1900.
31 Stat. L., 328, c. 786, s. 16. R. S., 2d Supp., p. 1200.
Accounting for fees for unrecorded instruments.

SEC. 380. Any clerk or commissioner authorized to record any instrument who having collected fees for so doing fails to record such instrument shall account to his successor in office, or to such person as the court may direct, for all the fees received by him for recording any instrument on file and unrecorded at the expiration of his official term, or at the time he is required to transfer his records to another officer under the direction of the court. And any clerk or commis-

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sioner who fails, neglects, or refuses to so account for fees received and not actually earned by the recording of instrument shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned for not more than one year, or until the fees received and unearned as aforesaid shall have been properly accounted for and paid over by him, as hereinbefore provided. And in addition such fees may be recovered from such clerk or commissioner or the bondsmen of either, in a civil action which shall be brought by the district attorney, in the name of the United States, to recover the same; and the amount when recovered shall be by the court transferred to the successor in office of such recorder, who shall thereupon proceed to record the unrecorded instruments: *Provided*, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites, and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act.

—penalty.

*Provisos.*
Miners' regulations for recording, etc.

—recorder.

Records at Dyea, etc., legalized.

Carter Code, sec. 16; Charlton Code, sec. 5947.

Butler *v.* Good Enough Min. Co. (1 Alaska Rep., 246, 254). Price *v.* McIntosh (1 Alaska Rep., 286). Loeser *v.* Gardiner (1 Alaska Rep., 641). McIntosh *v.* Price (2 Alaska Rep., 713). McFarland *v.* Alaska Perseverance Mining Co. (3 Alaska Rep., 320, 326). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 781). Alaska Explo. *v.* Northern M. & T. Co. (152 Fed. Rep., 145).

June 6, 1900.
31 Stat. L., 328, c. 786, s. 17.
R. S., 2d Supp., p. 1201.

Notaries public.

SEC. 381. Every person appointed as a notary public must at the time of his appointment be a resident of the district and must continue to reside therein during his term of office. Removal from the district vacates his office and is equivalent to resignation.

—residence.

The term of office of a notary public shall be four years from and after the date of his commission, but he may be sooner removed by the governor for misconduct in office.

—terms.

Carter Code, sec. 17; Charlton Code, sec. 5948.

June 6, 1900.
31 Stat. L., 328–329, c. 786, s. 18.
R. S., 2d Supp., p. 1201.

—duties.

SEC. 382. It shall be the duty of a notary public—

First. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages or by the laws of any State, Government, or country may be performed by notaries and keep a record of such acts.

Second. To take acknowledgment or proof of powers of attorney, deeds, mortgages, grants, transfers, and other instruments of writing executed by any person and to give a certificate of such proof or acknowledgment indorsed or attached to the instrument.

Third. To take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of the office or to be used before any court, judge, or officer.

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Fourth. When requested and upon payment of his fees therefor, to make and give a certified copy of any record in his office.

Fifth. To provide and keep an official seal, upon which must be engraved the name of the district and the words "Notary Public," with the surname of the notary and at least the initials of his Christian name.

Carter Code, sec. 18; Charlton Code, sec. 5949.
Subdiv. 3. (U. S. *v.* Pratt, 3 Alaska Rep., 409, 411.)

June 6, 1900.
31 Stat. L., 329, c. 786, s. 19.
R. S., 2d Supp., p. 1201.
Protests of notaries of bills, etc., weight as evidence.

SEC. 383. The protest of a notary public under his hand and seal of a bill of exchange or promissory note for nonacceptance or nonpayment, stating the presentment for acceptance or payment and the nonacceptance or nonpayment thereof, the service of notice on any and all parties to such bill of exchange or promissory note and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note and of the party to whom same was given and the post office nearest thereto is prima facie evidence of the facts contained therein.

Carter Code, sec. 19; Charlton Code, sec. 5950.

June 6, 1900.
31 Stat. L., 329, c. 786, s. 20.
R. S., 2d Supp., 1202.
Notaries' records to be deposited with clerk of court.

SEC. 384. It shall be the duty of every notary public, on his resignation or removal from office or at the expiration of his term, and in case of his death of his legal representative, to forthwith deposit all the records kept by him in the office of the clerk of the division of the district court in which he resides, and on failure to do so the person so offending is liable in damages to any person injured thereby.

Carter Code, sec. 20; Charlton Code, sec. 5951.

—duty of clerk.
Ibid., c. 786, s. 21.

SEC. 385. It shall be the duty of each clerk aforesaid to receive and safely keep all records and papers of the notary in each case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Carter Code, sec. 21; Charlton Code, sec. 5952.

Bond of notaries.
Ibid.

SEC. 386. Each notary must execute an official bond in the sum of one thousand dollars, which bond must be approved by the clerk of the division of the district court located nearest his residence.

Carter Code, sec. 22; Charlton Code, sec. 5953.

June 6, 1900.
31 Stat. L., 330.
R. S., 2d Supp., p. 1202.
—filing, etc.

SEC. 387. Each notary public, upon approval of his official bond, so soon as he has taken his official oath, must transmit such bond and oath, signed by him with his own proper signature, to the office of the secretary of the district, whereupon the governor must issue a commission.

Carter Code, sec. 23; Charlton Code, sec. 5953.

Liability of notary for misconduct.
Ibid., c. 786, s. 24.

SEC. 388. For the official misconduct or neglect of a notary public he and sureties on his official bond are liable to the parties injured thereby for all damages sustained.

Carter Code, sec. 24; Charlton Code, sec. 5954.

June 6, 1900.
31 Stat. L., 332, c. 786, s. 30.
R. S., 2d Supp., p. 1205.
Fees of officers not otherwise compensated.

SEC. 389. In case the law requires or authorizes any services to be performed or any act to be done by any official or person within the District of Alaska, and provides no compensation therefor, the Attorney General may prescribe and promulgate a schedule of such fees, mileage, or other compensation as shall be by him deemed proper for each division of the court, and such schedule shall have the force and effect of law; and the Attorney General may from time to time amend such schedule and promulgate the same as amended, and the schedule

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as amended and promulgated shall also have the force and effect of law.

Carter Code, sec. 30; Charlton Code, sec. 5969.

Use of public buildings for court rooms, etc.

SEC. 390. Any of the public buildings in the district not required for the customs service or military purposes may be used for court rooms and offices of the civil government; and the marshals of the district shall, each in his division, be the custodian of such buildings.

Construction of jails authorized. Ibid., c. 786, s. 31.

Any division of the court may, where necessary, order the construction or repair of a jail building at the place or places where terms of the court are held, at a cost not to exceed three thousand dollars for each building, the same to be paid by the clerk as provided for the payment of other allowances for the necessary expenses of the court; and any part or portion of the unappropriated public domain of the United States, embracing not more than four thousand square feet, to be taken in compact form, as near as may be practicable, may be set aside by order of the court as a jail site, which order shall describe the location of the ground selected, where unsurveyed by metes and bounds and by reference to natural objects and permanent monuments, in such manner that its boundaries and its location may be readily determined, a certified copy of which order of the court shall be by the clerk thereof transmitted to the Commissioner of the General Land Office, who shall cause the same to be noted on the records of his office, and thereafter the ground described shall be reserved from sale or other disposition, unless for good cause the court shall vacate the order of reservation or Congress shall otherwise direct, and the sentence of imprisonment in any criminal case shall be carried out by confinement in the penitentiary or jails herein provided for, or as provided in section fifty-five hundred and forty-six of the Revised Statutes of the United States.

—sites.

R. S., sec. 5546, p. 1074.

Construction of court building authorized.

Where a suitable court room is not available or can not be obtained at reasonable rental at the place or any of the places where terms of the court are held, the court may enter a like order of reservation and direct the construction of a suitable building where the sessions of the court may be held, the cost of such building not to exceed in any case the sum of five thousand dollars, the same to be paid and proceedings to reserve the land to be as in the case of the reservation of ground and construction of jail, as hereinbefore provided: *Provided*, No court building or jail shall be constructed in any division of the district without authority from the Attorney General, to whom the clerk shall furnish a verified account in detail of all expenditures made by him for buildings, repairs, or other purposes, together with his authority for each payment made.

—limit.

*Proviso.*
—limit number of buildings.

Carter Code, sec. 31; Charlton Code, sec. 5970.

Mar. 3, 1901.

31 Stat. L., 1183.

Rent of court rooms.

SEC. 391. For rent of rooms for the United States courts and judicial officers, one hundred and five thousand dollars: *Provided*, That in lieu of the construction of a courthouse and jail at Skagway, Alaska, as authorized by section thirty-one, chapter one, of the act of June sixth, nineteen hundred, the property described in House Document Numbered Two hundred and thirty-eight, second session, Fifty-sixth Congress, may be purchased by order of the first division of the district court for Alaska, at an expense not exceeding eight thousand dollars, to be paid as provided in said section thirty-one, after the United States district judge and attorney shall have carefully examined the title to said property and certified the same to be good and sufficient.

*Proviso.*
Skagway.
Purchase of certain property authorized in lieu of construction of courthouse and jail.
Laws 1st session 56th Congress, p. 333.

Charlton Code, p. 78.

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# CHAPTER TWO.

## ELECTION OF DELEGATE TO CONGRESS PROVIDED FOR.

Sec.
392. Delegate to be elected; qualifications; allowance for mileage, etc.
393. Date of first election; term; salary, etc.
394. Qualifications of voters.
395. Election districts in towns; officers; polls, etc.; notices.
396. Election districts outside towns; commissioners' duties; voting precincts; minimum number of voters; election notice; publication of; judges of election.
397. Election board, duties; oath; administering oaths to voters; clerks of election outside of towns, duties.
398. Watchers at polls; rights allowed.
399. Filling vacancies on election day.
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401. Challeges; oath required; acceptance or rejection; penalty for false swearing.
402. Canvass of votes cast; certificates in duplicate; one mailed to governor, one to clerk of district court; certified copy; preservation of documents.
403. Territorial canvassing board; canvass of result; certified copy of certificate; declaration of result.
404. Publication in newspapers; posting notices in polling places; rental; election.
405. Payment of expenses; audit of.
406. Penalties for illegal voting, etc.; intimidation, bribery, etc.; changing returns, etc.; neglect of duty, etc., by officers; jurisdiction.
407. Act to take effect upon its passage.

May 7, 1906.
34 Stat. L., 169, 170, 171, 172, 173, 174, 175.

Delegate to be elected.

Qualifications.

SEC. 392. The people of the Territory of Alaska shall be represented by a Delegate in the House of Representatives of the United States, chosen by the people thereof in the manner and at the time hereinafter prescribed, and who shall be known as the Delegate from Alaska. Such delegate shall at the time of his election have been for seven years a citizen of the United States, and shall be an inhabitant and qualified voter of the District of Alaska, and shall be not less than twenty-five years of age, and when duly chosen and qualified shall possess the same powers and privileges and be entitled to the same rate of compensation as the Delegates in the House of Representatives from the Territories of the United States: *Provided, however*, That such Delegate, in lieu of all other allowances, shall, in addition to his salary, receive the sum of one thousand five hundred dollars per annum, which shall cover all mileage and other expenses except stationery allowance and compensation for clerk hire.

Allowance for mileage, etc.

First election.

SEC. 393. The first election for Delegate from Alaska shall be held upon the second Tuesday of August, in the year nineteen hundred and six, and that all subsequent elections for such Delegate shall be held on the second Tuesday in August in each year when there is a general election for Members of the House of Representatives, and that at said first election there shall be elected a Delegate, who shall hold his office for the unexpired portion of the Fifty-ninth Congress, which term of office is hereinafter designated as the "short term"; and also at said first election there shall be elected a Delegate who shall hold his office for the full term of the Sixtieth Congress, which term of office is hereinafter designated as the "long term."

Ibid.

Terms.

That the Delegate chosen at said first election for the short term shall hold his office from the date of his election certificate during the remainder of the Fifty-ninth Congress; and the Delegate chosen at said first election for the long term shall hold his office for the full term of the Sixtieth Congress; that the Delegate chosen at each subsequent election shall hold his office for the same term as the Members of the House of Representatives chosen at the general election in the same year.

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Salary, etc.

That the salary and allowances of the Delegate chosen for the short term at said first election shall begin with the date of his election certificate, and shall extend throughout and until the close of the Fifty-ninth Congress. The salary and allowances of the Delegate chosen for the long term at said first election shall begin at the commencement of the term of the Sixtieth Congress and extend throughout and until the close thereof. The salary and allowances of the Delegate chosen at each subsequent election shall be for the full term of the Congress to which he is elected a Delegate.

NOTE.—This section has been amended by act of Aug. 24, 1912. See sec. 424, ch. 8, post, only as far as it concerns the date of the election of the Delegate.

Voting qualifications.

SEC. 394. All male citizens of the United States twenty-one years of age and over who are actual and bona fide residents of Alaska, and who have been such residents continuously during the entire year immediately preceding the election, and who have been such residents continuously for thirty days next preceding the election in the precinct in which they vote, shall be qualified to vote for the election of a Delegate from Alaska.

Ibid.

Election districts in towns.

SEC. 395. Each incorporated town in the District of Alaska shall constitute an election district, and where the population of such town exceeds one thousand inhabitants the common council may, in their discretion, at least thirty days before the election, divide the district into two or more voting precincts and define the boundaries of each precinct; and the said common council shall also appoint, at least thirty days before the election, three judges of election and two clerks for each voting precinct, all of whom shall be qualified voters of the precinct; and no more than two judges and one clerk shall belong to the same political party. The common council shall also, at least thirty days before the date of the election, provide a suitable polling place for each voting precinct and give due notice of the election by posting a written or printed notice in three public places in each precinct, specifying the time and place of the election, and in case there are one or more newspapers of general circulation published in the town, then a copy of said notice shall also be published in one of such newspapers at least once a week for two consecutive weeks next prior to the date of the election.

Ibid.

Officers.

Polls, etc.

Notices.

Election districts outside of towns.

SEC. 396. All of the territory in each recording district now existing or hereafter created situate outside of an incorporated town shall, for the purposes of this act, constitute one election district; that in each year in which a Delegate is to be elected the commissioner in each of said election districts shall, at least thirty days before the date of said first election and at least sixty days before the date of each subsequent election, issue an order and notice, signed by him and entered in his records in a book to be kept by him for that purpose, in which said order and notice he shall—

Commissioners' duties.

Ibid.

Voting precincts.

First. Divide his election district into such number of voting precincts as may in his judgment be necessary or convenient, defining the boundaries of each precinct by natural objects and permanent monuments or landmarks, as far as practicable, and in such manner that the boundaries of each can be readily determined and become generally known from such description, specify a polling place in each of said precincts, and give to each voting precinct an appropriate name by which the same shall thereafter be designated: *Provided, however*, That no such voting precinct shall be established with less than thirty qualified voters resident therein; that the precincts established as aforesaid shall remain as permanent precincts for all subsequent elections, unless discontinued or changed by order of the commissioner of that district.

Minimum number of voters.

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Election notice.

Second. Give notice of said election, specifying in said notice, among other things, the date of such election, the boundary of the voting precincts as established, the location of the polling place in the precinct, and the hours between which said polling places will be open.

Publication of.

Said order and notice shall be given publicity by said commissioner by posting copies of the same at least twenty days before the date of said first election, and at least thirty days before the date of each subsequent election. Said copies shall be posted as follows: One at the office of the commissioner in said district, and three copies to be posted in three conspicuous public places in each of said voting precincts as established, one of which shall be the designated polling place in each precinct; and said commissioner shall also mail a certified copy of said order and notice to the governor of Alaska at his official residence.

Judges of election.

That at least thirty days prior to the date of the holding of such election the commissioner shall select, notify, and appoint from among the qualified electors in each voting precinct three judges of election for said precinct, no more than two of whom shall be of the same political party. Said commissioner shall notify all of said judges of election of their appointment as such, so that each and all of them shall receive said notice at least ten days before the date of the election.

Election board. Duties. Ibid.

SEC. 397. The judges of election of each voting precinct shall constitute the election board for said precinct and shall supervise and have charge of the election therein. They shall secure and provide a place for holding the election and a suitable ballot box. They shall pass upon the qualification of the voter and, if he be found qualified, receive and deposit his ballot in the ballot box, and shall canvass and make a return of the votes cast, as hereinafter provided.

Oath.

That the members of said election board in each precinct, before entering upon the duties of their office, shall each severally take an oath, which shall be reduced to writing, before an officer qualified to administer oaths, to honestly, faithfully, and promptly perform the duties of their positions; and if no officer qualified to administer oaths be present or available, then any one of said duly appointed or selected judges of election may administer the necessary oath to said other two judges, and he shall afterwards in turn be sworn by one of them.

Administering oaths to voters.

That each of said judges shall have authority to administer any oath to the voter necessary or proper under this act, and said judges shall have equal authority; and in case of any question or disagreement over any matter during the course of said election, the decision of the majority of said judges shall govern.

Clerks of election outside of towns. Duties.

That two of the three judges of election in each voting precinct, outside of incorporated towns, to be selected by a majority of said judges, shall also perform the duties of clerks of election for that precinct; the two judges performing the duties of clerks shall be of different political parties; it shall be the duty of the clerks at each voting precinct to make a full written record of such election as held in that precinct, and each of them shall keep a correct duplicate register and enter therein the names of the voters and the fact that they have voted, or have offered to vote and were refused, and a brief statement of the reasons for said refusal.

Watchers at polls. Rights allowed. Ibid.

SEC. 398. Each of the candidates for the office of Delegate herein provided for, at any election held hereunder, shall be entitled to one watcher at each voting precinct, who shall be permitted to be present within the place of voting at such precinct, and in some place therein

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where he may at all times be in full view of every act done. Such watcher shall have the right to be so present at all times from the opening of the polls until the ballots are finally counted and the result certified by the election board. Each watcher shall be required to present to the election board proper credentials, signed by the candidate he represents, showing him to be the duly authorized watcher for such person.

Filling vacancies on election day. Ibid.

SEC. 399. In case any of the judges of election selected as herein provided for any precinct shall fail to appear and qualify at the time and place designated for the election for which they shall be appointed, then, in that event, the qualified voters present may, by a majority viva voce vote, select a suitable person or persons to fill the vacancy or vacancies in said election board; and the person or persons so selected shall qualify and serve on said election board with the same powers and in the same manner as if appointed as hereinbefore provided.

Voting hours. Ibid.

SEC. 400. The election boards herein provided for shall keep the several polling places open for the reception of votes from eight o'clock antemeridian until seven o'clock postmeridian on the day of election. The voting at said election shall be by printed or written ballot. The ballot at said first election shall be substantially in the following form:

Ballots, form, etc.

"FOR DELEGATE FROM ALASKA.

"For the short term (here insert the name of the person voted for).

"For the long term (here insert the name of the person voted for)."

At all elections after said first election the ballot shall be substantially in the following form:

"FOR DELEGATE FROM ALASKA.

"(Here insert the name of the person voted for.)"

Casting ballots.

Such ballot shall be folded by the voter so as not to disclose the vote, and by him handed to any one of the judges of election, who shall immediately, in the presence of the voter and of all the members of the election board, deposit the same, folded as aforesaid, in the ballot box, where the same shall remain untouched until the polls are closed. At the time the ballot is so deposited the clerks of election shall each of them enter in his duplicate register the name of the voter and the fact that he has voted.

Register of votes.

Challenges. Ibid.

SEC. 401. Any person offering to vote may be challenged by any election officer or any other person entitled to vote at the same polling place, or by any duly appointed watcher, and when so challenged, before being allowed to vote he shall make and subscribe to the following oath: "You do solemnly swear (or affirm, as the case may be) that you are twenty-one years of age and a citizen of the United States; that you are an actual and bona fide resident of Alaska, and have been such resident during the entire year immediately preceding this election, and have been a resident in this voting precinct for thirty days next preceding this election, and that you have not voted at this election," and further naming the place from which the voter came immediately prior to living in the precinct in which he offers to vote, and giving the length of time of his residence in the former place. And when he has made such an affidavit he shall be allowed

Oath required.

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Acceptance, or rejection.
Penalty for false swearing.

to vote; but if any person so challenged shall refuse or fail to take such oath and sign such affidavit, then his vote shall be rejected; and any person swearing falsely in any such affidavit shall be guilty of perjury and shall, upon conviction thereof, suffer punishment as is prescribed by law for persons guilty of perjury.

Canvass of votes cast.
Ibid.

SEC. 402. The election board at each polling place, as soon as the polls are closed, shall immediately publicly proceed to open the ballot box and count and canvass the votes cast, and they shall thereupon,

Certificates in duplicate.

under their hands and seals, make out in duplicate a certificate of the result of said election, specifying the number of votes, in words and figures, cast for each candidate, and they shall then immediately carefully and securely seal up in one envelope one of said duplicate certificates and one of the registers of voters, all the ballots cast, and

One mailed to governor.

all affidavits made, and mail such envelope, with said papers inclosed, at the nearest post office by registered mail, if possible, duly addressed to the governor of Alaska at his place of residence, with the postage prepaid thereon.

One to clerk of district court.

The other duplicate certificate and register of voters, with the oaths of the judges of election, the judges of election shall at once seal up in an envelope addressed to the clerk of the district court for the division in which the precinct is situate, at his place of residence, with the postage thereon prepaid, and deposit the same in the nearest

Certified copy.

post office, by registered mail, if possible. And the said clerk shall, as soon as he receives the said duplicate certificate, at once make out and duly mail to the governor of Alaska a certified copy of such certificate.

Preservation of documents.

The clerks of the district courts for the various divisions of Alaska and the governor of Alaska shall each retain and carefully preserve all such documents received by them until the end of the term for which the Delegate chosen has been elected.

Territorial canvassing board.
Ibid.

SEC. 403. The governor, the surveyor general, and the collector of customs for Alaska shall constitute a canvassing board for the Territory of Alaska to canvass and compile in writing the vote specified in the certificates of election returned to the governor from all the several election precincts as aforesaid.

Canvass of result.

The said canvassing board shall commence the performance of its duties at the office of the governor within ten days after the third Tuesday of October in each year in which an election is held under and by virtue of this act, and shall continue with such work from day to day until the same is completed; and said canvass shall be publicly made.

Certified copy of certificate.

In case it shall appear to said board that no election return as hereinbefore prescribed has been received by the governor from any precinct in which an election has been held, the said board may accept in place thereof the certified copy of the certificate of election for such precinct received from the clerk of the court, and may canvass and compile the same with the other election returns.

Declaration of result.

Said board, upon the completion of said canvass, shall declare the person who has received the greatest number of votes for Delegate to be the duly elected Delegate from Alaska for the term for which he has been so elected, and shall issue and deliver to him in writing under their hands and seals a certificate of his election.

Publication in newspapers.
Ibid.

SEC. 404. Each newspaper in Alaska authorized to publish the notice of election provided for herein, and having published the same according to law, shall be entitled to receive therefor not more than ten dollars for the entire publications of any one election; that each commissioner in the Territory of Alaska is authorized to contract for

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the proper posting of all election notices, as provided herein, in each voting precinct created in his said election district, and that not more than the sum of ten dollars shall be allowed at each election for the posting of said notices in any one voting precinct in Alaska; that not more than ten dollars at each election shall be allowed for the rental of a proper polling place in each voting precinct in Alaska; that each of the judges of election who shall qualify and serve as such in any precinct on said election day and each of the clerks of election in an incorporated town shall be entitled to a compensation of five dollars for all services performed.

Posting notices in polling places.

Rental.

Election officers.

SEC. 405. The compensation for said newspaper publications, the proper posting of said notices, the rental of said polling places, the fees of the judges and clerks of election in each precinct, together with the cost of securing a ballot box and the cost of necessary postage and stationery, shall be certified with proper vouchers and receipts attached by the various election officials to the judge of the district court in the said judicial division in which said voting precinct is situate, and the same shall be audited by said judge and shall be paid by the clerk of the court of said division out of the same fund and in the same manner as the incidental expenses of said district court are paid.

Payment of expenses.
Ibid.

Audit of.

SEC. 406. Any person who, by any means, shall hinder, delay, prevent, or obstruct any other person from qualifying himself to vote or from lawfully voting at any election herein provided for, or who shall knowingly personate and vote or attempt to vote in the name of any other person, or who shall vote more than once at the same election, or shall vote at a place where or at a time when he may not lawfully be entitled to vote, or shall do any unlawful act to secure an opportunity to vote, for himself or for any other person, or who, by or through any force, threat, intimidation, bribery, reward or offer thereof, unlawfully vote himself or procures another to vote, or prevents or induces another to refrain from exercising his right of suffrage, or induces by any means any officer of an election to do any unlawful act or omit to do his duty in any manner, or who, directly or indirectly, in any manner shall fraudulently change or cause to be changed the returns or the true and lawful result of any election hereunder or shall attempt to do the same, or who shall delay, cause to be delayed, or connive at the delay of election returns in any manner or attempt to do so, shall be guilty of a crime, and upon the conviction thereof shall be punished by a fine of not more than five hundred dollars nor less than one hundred dollars, or imprisoned not more than three years, or both, in the discretion of the court, and pay the costs of the prosecution; and every officer of an election held hereunder who neglects to perform or violates any duty imposed upon him as such officer, or knowingly does any unauthorized act with the intent to affect the election or the result thereof, or who shall permit, make, or connive at any false count or certificate of election, or who shall conceal, withhold, destroy, or willfully delay the returns of election, or connive at the same being done, or who shall aid, counsel, or procure any person to do or attempt to do any act made a crime hereinbefore, or shall attempt to do any of the acts hereinbefore mentioned, shall be guilty of a crime, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment of not more than five years, or both, in the discretion of the court, and shall pay all costs of the prosecution; and jurisdiction of all such matters is hereby conferred upon the district court of Alaska.

Penalties.
For illegal voting, etc.
Ibid.

Intimidation, bribery, etc.

Changing returns, etc.

Neglect of duty, etc., by officers.

Jurisdiction.

SEC. 407. This act shall take effect upon its passage.

Effect.
Ibid.

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# CHAPTER THREE.

## CREATION OF LEGISLATIVE ASSEMBLY PROVIDED FOR.


Sec.
408. Alaska Territory organized.
409. Capital at Juneau.
410. Constitution and laws of United States extended.
411. The legislature, senate and house of representatives.
412. Election of members of the legislature, qualifications.
413. Convening and sessions.
414. Organization of the legislature.
415. Enacting clause, subject of act.
416. Legislative power, limitations.
417. Rules, quorum, and majority.
418. Legislator shall not hold other office.
419. Exemptions of legislator.
420. Passage of laws.
421. Veto power.
422. Payment of legislative expenses.
423. Laws transmitted to President and printed.
424. Election of Delegates to Congress.
425. Creating railroad commission.
426. Laws shall be submitted to Congress.


Aug. 24, 1912.
37 Stat. L., 512.
Alaska Territory organized.

SEC. 408. That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall be and constitute the Territory of Alaska under the laws of the United States, the government of which shall be organized and administered as provided by said laws.

Capital at Juneau.
Ibid.

SEC. 409. That the capital of the Territory of Alaska shall be at the city of Juneau, Alaska, and the seat of government shall be maintained there.

Constitution and laws of United States extended.
Ibid.

SEC. 410. That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; that all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by act of Congress; that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature: *Provided*, That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal, or other general laws of the United States or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to the act entitled "An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved January twenty-seventh, nineteen hundred and five, and the several acts amendatory thereof: *Provided further*, That this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses. And the legislature shall pass no law depriving the judges and officers of the district court of Alaska of any authority, jurisdiction, or function exercised by like judges or officers of district courts of the United States.

*Proviso.*

*Proviso.*

The legislature.
Ibid.
Senate and house of representatives.

SEC. 411. That the legislative power and authority of said Territory shall be vested in a legislature, which shall consist of a senate and a house of representatives. The senate shall consist of eight members, two from each of the four judicial divisions into which Alaska is now divided by act of Congress, each of whom shall have at the time of his election the qualifications of an elector in Alaska, and shall have been a resident and an inhabitant in the division from which he is elected for at least two years prior to the date of his election. The term of office of each member of the senate shall be four years: *Provided*, That immediately after they shall be assembled in consequence of the first election they shall, by lot or drawing, be divided in each division into two classes; the seats of the members

*Proviso.*

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of the first class shall be vacated at the end of two years and the seats of the members of the second class shall be vacated at the end of four years, so that one member of the senate shall, after the first election, be elected biennially at the regular election from each division. The house of representatives shall consist of sixteen members, four from each of the four judicial divisions into which Alaska is now divided by act of Congress. The term of office of each representative shall be for two years and each representative shall possess the same qualifications as are prescribed for members of the senate and the persons receiving the highest number of legal votes in each judicial division cast in said election for senator or representative shall be deemed and declared elected to such office: *Provided*, That in the event of a tie vote the candidates thus affected shall settle the question by lot. In case of a vacancy in either branch of the legislature the governor shall order an election to fill such vacancy, giving due and proper notice thereof. That each member of the legislature shall be paid by the United States the sum of fifteen dollars per day for each day's attendance while the legislature is in session, and mileage, in addition, at the rate of fifteen cents per mile for each mile from his home to the capital and return by the nearest traveled route.

*Proviso.*

Election of members of the legislature.
Ibid.
Qualifications.

SEC. 412. That the first election for members of the Legislature of Alaska shall be held on the Tuesday next after the first Monday in November, nineteen hundred and twelve, and all subsequent elections for the election of such members shall be held on the Tuesday next after the first Monday in November biennially thereafter; that the qualifications of electors, the regulations governing the creation of voting precincts, the appointment and qualifications of election officers, the supervision of elections, the giving of notices thereof, the forms of ballots, the register of votes, the challenging of voters, and the returns and the canvass of the returns of the result of all such elections for members of the legislature shall be the same as those prescribed in the act of Congress entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May seventh, nineteen hundred and six, and all the provisions of said act which are applicable are extended to said elections for members of the legislature, and shall govern the same, and the canvassing board created by said act shall canvass the returns of such elections and issue certificates of election to each member elected to the said legislature; and all the penal provisions contained in section four hundred and six of the said act shall apply to elections for members of the legislature as fully as they now apply to elections for Delegate from Alaska to the House of Representatives.

NOTE.—See secs. 394, 395, 396, ante.

Convening and sessions of legislature.
Ibid.

SEC. 413. That the Legislature of Alaska shall convene at the capitol at the city of Juneau, Alaska, on the first Monday in March in the year nineteen hundred and thirteen, and on the first Monday in March every two years thereafter; but the said legislature shall not continue in session longer than sixty days in any two years unless again convened in extraordinary session by a proclamation of the governor, which shall set forth the object thereof and give at least thirty days' written notice to each member of said legislature, and in such case shall not continue in session longer than fifteen days. The governor of Alaska is hereby authorized to convene the legislature in extraordinary session for a period not exceeding fifteen days when requested to do so by the President of the United States, or when any public danger or necessity may require it.

Organization of the legislature.
Ibid.

SEC. 414. That when the legislature shall convene under the law, the senate and house of representatives shall each organize by the

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election of one of their number as presiding officer, who shall be designated in the case of the senate as "president of the senate" and in the case of the house of representatives as "speaker of the house of representatives," and by the election by each body of the subordinate officers provided for in section eighteen hundred and sixty-one of the United States Revised Statutes of eighteen hundred and seventy-eight, and each of said subordinate officers shall receive the compensation provided in that section: *Provided*, That no person shall be employed for whom salary, wages, or compensation is not provided in the appropriation made by Congress.

R. S., 1878, sec. 1861.

*Proviso.*

Enacting clause, subject of act. Ibid.

SEC. 415. That the enacting clause of all laws passed by the legislature shall be "Be it enacted by the Legislature of the Territory of Alaska." No law shall embrace more than one subject, which shall be expressed in its title.

Legislative power, limitations. Ibid.

SEC. 416. The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents; nor shall the legislature grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the affirmative approval of Congress; nor shall the legislature pass local or special laws in any of the cases enumerated in the act of July thirtieth, eighteen hundred and eighty-six; nor shall it grant private charters or special privileges, but it may, by general act, permit persons to associate themselves together as bodies corporate for manufacturing, mining, agricultural, and other industrial pursuits, and for the conduct of business of insurance, savings banks, banks of discount and deposit (but not of issue), loans, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association, but the authority embraced in this section shall only permit the organization of corporations or associations whose chief business shall be in the Territory of Alaska; no divorce shall be granted by the legislature, nor shall any divorce be granted by the courts of the Territory, unless the applicant therefor shall have resided in the Territory for two years next preceding the application, which residence and all causes for divorce shall be determined by the court upon evidence adduced in open court; nor shall any lottery or the sale of lottery tickets be allowed; nor shall the legislature or any municipality interfere with or attempt in any wise to limit the acts of Congress to prevent and punish gambling, and all gambling implements shall be seized by the United States marshal or any of his deputies, or any constable or police officer, and destroyed; nor shall spirituous or intoxicating liquors be manufactured or sold, except under such regulations and restrictions as Congress shall provide; nor shall any public money be appropriated by the Territory or any municipal corporation therein for the support or benefit of any sectarian, denominational, or private school, or any school not under the exclusive control of the Government; nor shall the government of the Territory of Alaska or any political or municipal corporation or subdivision of the Territory make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall the Territory, or any municipal corporation therein, have power or authority to create or assume any bonded indebtedness whatever, nor to borrow money in the name of

Act of July 30, 1886.

Incorporate.

Divorce.

Lotteries.

Liquors.

Appropriations of public moneys.

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the Territory or of any municipal division thereof; nor to pledge the faith of the people of the same for any loan whatever, either directly or indirectly; nor to create, nor to assume, any indebtedness, except for the actual running expenses thereof; and no such indebtedness for actual running expenses shall be created or assumed in excess of the actual income of the Territory or municipality for that year, including as a part of such income appropriations then made by Congress, and taxes levied and payable and applicable to the payment of such indebtedness and cash and other money credits on hand and applicable and not already pledged for prior indebtedness: *Provided*, That all authorized indebtedness shall be paid in the order of its creation; all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year; nor shall any incorporated town or municipality levy any tax, for any purpose, in excess of two per centum of the assessed valuation of property within the town in any one year: *Provided*, That the Congress reserves the exclusive power for five years from the date of the approval of this act to fix and impose any tax or taxes upon railways or railway property in Alaska, and no acts or laws passed by the Legislature of Alaska providing for a county form of government therein shall have any force or effect until it shall be submitted to and approved by the affirmative action of Congress; and all laws passed, or attempted to be passed, by such legislature in said Territory inconsistent with the provisions of this section shall be null and void: *Provided further*, That nothing herein contained shall be held to abridge the right of the legislature to modify the qualifications of electors by extending the elective franchise to women.

*Proviso.*

*Proviso.*

*Proviso.*

Rules, quorum and majority.

SEC. 417. That the senate and house of representatives shall each choose its own officers, determine the rules of its own proceedings not inconsistent with this act, and keep a journal of its proceedings; that the ayes and noes of the members of either house on any question shall, at the request of one-fifth of the members present, be entered upon the journal; that a majority of the members to which each house is entitled shall constitute a quorum of such house for the conduct of business, of which quorum a majority vote shall suffice; that a smaller number than a quorum may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may provide; that for the purpose of ascertaining whether there is a quorum present the presiding officer shall count and report the actual number of members present.

Ibid.

Legislator shall not hold other office.

SEC. 418. That no member of the legislature shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected and for one year after the expiration of such term; and no person holding a commission or appointment under the United States shall be a member of the legislature or shall hold any office under the government of said Territory.

Ibid.

Exemptions of legislators.

SEC. 419. That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance upon the sessions of the respective houses, and in going to and returning from the same: *Provided*, That such privilege as to going and returning shall not cover a period of more than ten days each way, except in the second division, when it shall extend to twenty days each way, and the fourth division to fifteen days each way.

Ibid.

*Proviso.*

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Passage of laws.

SEC. 420. That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration.

Ibid.

The veto power.

SEC. 421. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter, unless sooner given effect by a two-thirds vote of said legislature. If the governor does not approve such bill, he may return it, with his objections, to the legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become a law. That if the governor neither signs nor vetoes a bill within three days (Sundays excepted) after it is delivered to him, it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such three days. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law.

Ibid.

Payment of legislative expenses.

SEC. 422. That there shall be annually appropriated by Congress a sum sufficient to pay the salaries of members and authorized employees of the Legislature of Alaska, the printing of the laws, and other incidental expenses thereof; the said sums shall be disbursed by the governor of Alaska, under sole instructions from the Secretary of the Treasury, and he shall account quarterly to the Secretary for the manner in which the said funds shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by the governor or by the legislature for objects not authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Ibid.

Laws transmitted to President and printed.

SEC. 423. That the governor of Alaska shall, within ninety days after the close of each session of the Legislature of the Territory of Alaska, transmit a correct copy of all the laws and resolutions passed by the said legislature, certified to by the secretary of the Territory, with the seal of the Territory attached; one copy to the President of the United States, and one to the Secretary of State of the United States; and the legislature shall make provisions for printing the session laws and resolutions within ninety days after the close of each session and for their distribution to public officials and sale to the people of the Territory.

Ibid.

Election of delegates.

SEC. 424. That after the year nineteen hundred and twelve the election for Delegate from the Territory of Alaska, provided by "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May seventh, nineteen hundred and six, shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and fourteen, and

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every second year thereafter on the said Tuesday next after the first Monday in November, and all of the provisions of the aforesaid act shall continue to be in full force and effect and shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein: *Provided*, That the time for holding an election in said Territory for Delegate in Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by an act passed by the Legislature of the Territory of Alaska: *Provided further*, That when such election is held it shall be governed in every respect by the laws passed by Congress governing such election.

*Provisos.*

*Provisos.*

NOTE.—See sec. 393, ante.

Creating railroad commission. Ibid.

SEC. 425. That an officer of the Engineer Corps of the United States Army, a geologist in charge of Alaska surveys, an officer in the Engineer Corps of the United States Navy, and a civil engineer who has had practical experience in railroad construction and has not been connected with any railroad enterprise in said Territory be appointed by the President as a commission hereby authorized and instructed to conduct an examination into the transportation question in the Territory of Alaska; to examine railroad routes from the seaboard to the coal fields and to the interior and navigable waterways; to secure surveys and other information with respect to railroads, including cost of construction and operation; to obtain information in respect to the coal fields and their proximity to railroad routes; and to make report of the facts to Congress on or before the first day of December, nineteen hundred and twelve, or as soon thereafter as may be practicable, together with their conclusions and recommendations in respect to the best and most available routes for railroads in Alaska which will develop the country and the resources thereof for the use of the people of the United States: *Provided further*, That the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the expenses of said commission.

*Proviso.*

Laws shall be submitted to Congress. Ibid.

SEC. 426. That all laws passed by the Legislature of the Territory of Alaska shall be submitted to the Congress by the President of the United States, and, if disapproved by Congress, they shall be null and of no effect.

## NOTE TO TITLE XI.

### POLITICAL CODE.

Prior to 1884, legislation affecting Alaska was principally confined to the protection of fur seals, and the courts of Oregon, Washington, and California had jurisdiction over the Territory.

May 17, 1884.

23 Stat. L., 24.

An act providing that the territory ceded to the United States by Russia shall constitute a civil and judicial district, with the seat of government at Sitka.

Sec. 2, Ibid.

This provides for the appointment of a governor, who shall be charged with the interests of the United States that may arise within said district. His duties are defined, and the act provides that he shall make an annual report on October 1 to the President.

It also provides that he shall inquire into the operations of the Alaska Seal Co. and report to Congress annually.

This act expressly provides that there shall be no legislative assembly in said district, nor shall any Delegate be sent to Congress therefrom.

The act further provides that the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not inconsistent with the provisions of the act.

It further provides that nothing contained in this act shall be construed to put in force in said district the general land laws of the United States, but it does, by an express provision, extend the laws relating to mines and mining claims to the District of Alaska.

It provides that the clerk of the district court provided for in the act shall be secretary and treasurer of the district.



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July 24, 1897.
30 Stat. L., 215.

Section 8 of the act of 1884 was amended by striking out the provision that the commissioner provided for in that act should be ex officio register of the land office, and also the clerk provided for in that act should be ex officio receiver of public moneys, and also that the marshal provided for in said act shall be ex officio surveyor general; and then provides that the President shall, by and with the advice and consent of the Senate, appoint a surveyor general for the District of Alaska.

May 14, 1898.
30 Stat. L., 414.

This act provides that the President may appoint a register and receiver of public moneys for each land district.

June 6, 1900.
31 Stat. L., 321.
R. S., 2d Supp., p. 1194.

This is an entirely new act providing for civil government of Alaska.

It provides for the appointment of a governor and defines his duties. It also provides that the surveyor general of the district shall be ex officio secretary of the district and custodian of the district seal.

Mar. 3, 1905.
33 Stat. L., 1265.

It provides for his filing a bond, and the act of March 3, 1905 (33 Stat. L., 1265), provides that the Secretary of the Interior shall fix the fees which may be charged by him for services. For disposition of fees, see chapter 4, Title IX, "Historical library and museum."

HISTORY OF JUDICIARY.

Prior to the act of May 17, 1884, the United States courts of Washington, Oregon, and California had jurisdiction over the District of Alaska. (See act of July 27, 1868, 15 Stat. L., 240, and amendments thereto.)

May 17, 1884.
23 Stat. L., 24.

Provision is made by this act for a district court for said district, with civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction not inconsistent with the act as may be established by law.

It provides that the President shall appoint a district judge, who shall hold at least two terms of court each year at Sitka, and one at Wrangel.

June 6, 1900.
31 Stat. L., 322.
R. S., 2d Supp., ch. 7, p. 1194.

This is an entirely new act for civil government for Alaska. It provides that there shall be established a district court for the District of Alaska, and that three district judges shall be appointed for the district, who shall reside in the divisions of the district to which they may be respectively assigned by the President.

Mar. 3, 1909.
35 Stat. L., 839.

This act provides for a district court in the District of Alaska, and also provides for four district judges, etc.

Prior act of March 3, 1899, providing criminal code for Alaska.

COMMISSIONERS PROVIDED FOR.

June 6, 1900.
31 Stat. L., 324.
R. S., 2d Supp., p. 1196.

This act provides that judges of the courts shall appoint, and at pleasure remove, clerks and commissioners in and for the district, who shall have the jurisdiction conferred by law in any part thereof.

It also provides that they shall perform duties and exercise all the powers, civil and criminal, of United States Commissioners, and shall be ex officio justices of the peace, recorders, and probate judges.

By the act of May 17, 1884 (23 Stat. L., 24), the President was authorized to appoint four commissioners in and for the District of Alaska, and in addition to ordinary powers and duties of commissioners, it was provided that they should have jurisdiction in all probate matters, and also should be recorders of deeds and other instruments in writing, etc.

The above act of 1884 was amended by act of June 4, 1897 (30 Stat. L., 56), which act provided that the President might appoint four additional commissioners in and for the District of Alaska.

Mar. 3, 1909.
35 Stat. L., 840.

This act provides that four clerks shall be appointed. The act of June 6, 1900, provides that the respective judges of the courts shall appoint and remove at pleasure clerks and commissioners.

Mar. 3, 1909.
35 Stat. L., 840.

This act provides for the appointment of four clerks and also for deputies. The original act of May 17, 1884 (23 Stat. L., 24), provided that the President shall appoint clerk for the court.

June 6, 1900.
31 Stat. L., 324.

This act provides for the appointment of clerks by judges of the courts, and the act of March 3, 1909, for four clerks.

The above act of 1884 provided for the appointment by the President of the United States of district attorney and for marshal. This act was amended by the above act of June 6, 1900, so as to provide for the President's appointing three district attorneys, three marshals, and also providing for assistant district attorneys and deputy marshals, and the act of March 3, 1909, further amended the original act by providing for four district attorneys and four marshals, etc.

DELEGATE TO CONGRESS.

May 7, 1906.
34 Stat. L., 169.

This act provides for the election of a Delegate in the House of Representatives of the United States.

LEGISLATIVE ASSEMBLY.

Aug. 24, 1912.
37 Stat. L., 513.

This act provides for a legislative assembly for the Territory, consisting of a senate and a house.

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# TITLE XII.

## CIVIL CODE.

### CONSTRUCTION OF STATUTES.

It is a cardinal rule of interpretation that every provision or clause of a statute should, if possible, be given effect: In re C. E. Wynn-Johnson (1 Alaska Rep., 630). Chambers *v.* Solner, Treasurer of Nome (1 Alaska Rep., 271). Brand *v.* Common Council of Nome (3 Alaska Rep., 37). U. S. *v.* Folsom (3 Alaska Rep., 228). Bergstrom *v.* Alaska Central R. Co. (3 Alaska Rep., 433).

The safe and proper rule of construction of mechanic's lien statutes is that while the remedial portions of these statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depend, being in derogation of the common law, should be strictly construed: Morris *v.* Marsh (3 Alaska Rep., 144).

Courts may consider the whole of the statute, or a series of amending statutes. the titles of the several acts and their general scope and purpose, a legislative classification thereof in a revised edition, and the titles, headings, and marginal notes in such legislative revision, in determining the intention of the legislature in a subsequent statute adopting parts or the whole of such former statutes: McFarland et al. *v.* Alaska Perseverance Mining Co. (3 Alaska Rep., 308, 325).

Congress borrowed the Alaska law of forcible entry and detainer from Oregon. The adoption by Congress of a State statute includes the adoption of the construction previously given to it. A statute taken from another State will be presumed to be taken with the meaning it had there: Steil *v.* Dessmore (3 Alaska Rep., 395).

It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word, and that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each: U. S. *v.* Pratt (3 Alaska Rep., 412). Brace *v.* Solner, Treasurer of Nome (1 Alaska Rep., 361).

### CONSTRUCTION OF AND TEST OF "LEAD A CIVILIZED LIFE."

The test to be applied should be as to whether or not the persons in question have turned aside from old associations, former habits of life, and easier modes of existence; in other words, have exchanged the old barbaric, uncivilized environments for one changed, new, and so different as to indicate an advanced and improved condition of mind, which desires and reaches out for something altogether distinct from and unlike the old life: Davis *v.* Sitka School Board (3 Alaska Rep., 488).

### AMENDMENT—REVISION—CODIFICATION.

Where a later statute is intended to alter former laws and to introduce new provisions or modifications therein, it is an amendatory law. To the extent, however, that it reduces to one system or body of law all the law upon the subject, it codifies the law upon that subject: Town of Nome *v.* Schneider (3 Alaska Rep., 61).

### REPEAL—SUSPENSION—EXPIRATION AND REVIVAL.

If two statutes relate to the same subject matter, though not in terms repugnant or inconsistent, if the later one is plainly intended to prescribe the only rule that shall govern, it will repeal the earlier: Town of Nome *v.* Schneider (3 Alaska Rep., 61).

Where one act is framed from another, some parts taken and others omitted, the later act operates, without any repealing clause, as a repeal of the first-Town of Nome *v.* Schneider (3 Alaska Rep., 62).



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### RECITALS IN, AS EVIDENCE OF FACTS.

It is well settled that a mere recital in an act, whether of fact or of law, is not conclusive unless it be clear that the legislature intended that the recital should be accepted as a fact in the case. While the recitals in public acts are regarded as evidence of the facts recited, it is otherwise with reference to private acts. They are not evidence except against the party who procured them. Kinkead *v.* U. S. (150 U. S., Rep., 483; 14 Sup. Ct. Rep., 172; 1 Alaska Rep. 818).

### DO NOT OPERATE RETROSPECTIVELY.

The provision in the organic act of Alaska (act May 17, 1884), adopting the laws of Oregon in part as the laws of Alaska, does not operate retrospectively, there being nothing in the act from which it can be inferred that it was so intended: In re Can-ah-couqua (29 Fed. Rep., 687; 1 Alaska Rep., 818).


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## CHAPTER ONE.

### OF COMMISSIONERS' PRECINCTS.


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| 428. | Additional commissioners. | 430. | Attorney general to make rules and regulations. |


June 6, 1900.
31 Stat. L., 494.
R. S., 2d Supp., p. 1369.

SEC. 427. It shall be the duty of the judge of each division of the district court for the District of Alaska, by an order to be entered

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Judge to divide district into precincts.

upon the journal of the court, to divide the respective divisions of the district into precincts, and he may thereafter, from time to time, alter the same and establish new precincts as the public convenience may require. He shall define the boundaries of such precincts by topographical lines or otherwise, as may be most convenient.

Carter Code, sec. 1; Charlton Code, sec. 1.

Linge's Adm'r *v.* Alaska Treadwell Co. (3 Alaska Rept., 24). Cheney *v.* Alaska Treadwell G. M. Co. (148 Fed., 808).

Additional commissioners. Ibid.

SEC. 428. The boundaries of the precincts shall be so established that, considering distance and means of travel, public convenience may be promoted by requiring the appointment of commissioners by the division of the district court most readily accessible to the area embraced in the precinct. Precincts shall bear such name or number as the court in the order creating it may designate. The precinct lines shall only be regarded for purposes of convenience in fixing identity, but shall not be limitations on the jurisdiction of commissioners as established by law.

Carter Code, sec. 2; Charlton Code, sec. 2.

Linge's Adm'r *v.* Alaska Treadwell Co. (3 Alaska Rept., 24). U. S. *v.* Harden (10 Fed., 802). Williams *v.* Tidball (Ariz., 8 Pac., 351).

Jurisdiction and authority of commissioners. Ibid.

SEC. 429. In the event of failure of the judges to include all of the district within precinct limits, the Attorney General may, by order, cause the omitted area to be attached to or embraced in an established precinct or precincts.

Carter Code, sec. 3; Charlton Code., sec. 3.

Attorney General to make rules and regulations.

SEC. 430. The Attorney General may, from time to time, make such rules and regulations, not in conflict with law, as he may deem necessary to insure the efficient administration of the law and to avoid conflicts of jurisdiction or of officials in the district.

Carter Code, sec. 4; Charlton Code, sec. 4.

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# CHAPTER TWO.

## OF HUSBAND AND WIFE.


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442. May constitute each other attorney in fact.
443. Neither liable for the other's debts.


June 6, 1900.

31 Stat. L., 494–495.
R. S., 2d Supp., p. 1370.

Marriage a civil contract; at what age contracted.

SEC. 431. Marriage is a civil contract, which may be entered into by males of the age of twenty-one years and females of the age of eighteen years who are otherwise capable.

Carter Code. sec. 5; Charlton Code, sec. 5.

Rugh *v.* Ottenheimer (6 Or. Rep., p. 232). Starr *v.* Hamilton (1 Deady Rep., p. 268). Holmes *v.* Holmes (1 Saw. Rep., p. 99). McLennan *v.* McLennan (50 Pac. Rep., p. 802; 38 L. R. A., p. 63). State *v.* Eggleston (77 Pac. Rep., p. 738). Sturgis *v.* Sturgis (93 Pac. Rep., p. 696). State *v.* Elsen (99 Pac. Rep., p. 282).

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Between what persons prohibited.

SEC. 432. The following marriages are prohibited:

(1) When either party thereto has a husband or wife living at the time of such marriage.

(2) When the parties thereto are related to each other within and not including the fourth degree of consanguinity, whether of the whole or half blood, computed according to rules of the civil law.

Carter Code, sec. 6; Charlton Code, sec. 6.
Sturgis *v.* Sturgis (93 Pac. Rep., p. 696).

When voidable.

SEC. 433. When either party to a marriage shall be incapable of consenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability or upon whom the force or fraud is imposed.

Carter Code, sec. 7; Charlton Code, sec. 7.
Sturgis *v.* Sturgis (93 Pac. Rep., p. 696).

By whom solemnized.

SEC. 434. Marriages may be solemnized by any minister or priest of any church or congregation in the district anywhere within the district, and by any judicial officer of the district anywhere within his jurisdiction, and commissioners as ex officio justices of the peace are to be deemed judicial officers of the district within the meaning of this section.

Carter Code, sec. 8; Charlton Code, sec. 8.

How solemnized.

SEC. 435. In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of each other and of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife.

Carter Code, sec. 9; Charlton Code, sec. 9.
In re Estate of Megginson (28 Pac. Repr., p. 338). Non-She-Po *v.* Wa-win-Ta (62 Pac. Repr., p. 16) Holmes *v.* Holmes (1 Saw., p. 99).

Certificate of marriage.

SEC. 436. The person solemnizing the marriage shall give to each of the parties thereto a certificate thereof, specifying therein the names and residence of the parties and of at least two witnesses present at the time and place of such marriage.

Carter Code, sec. 10; Charlton Code, sec. 10.
State *v.* Isenhart (52 Pac. Repr., p. 569).

Marriages by de facto clergymen or judicial officers.

SEC. 437. A marriage solemnized before any person professing to be a minister or priest of any church or congregation in the district or any judicial officer thereof is not void, nor shall the validity thereof be in any way affected, on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Carter Code, sec. 11; Charlton Code, sec. 11.

Ritual of religious bodies recognized.

SEC. 438. Illegitimate children become legitimate by the subsequent marriage of their parents with each other; and all marriages to which there are no legal impediments solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid.

Carter Code, sec. 12; Charlton Code, sec. 12.
Kalyton *v.* Kalyton, 74 Pac. Repr., p. 491.

Neither husband nor wife has interest in property of the other.

SEC. 439. When property is owned by either husband or wife, the other has no such interest as will make the same liable for the con-

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tracts or liabilities of either the husband or wife who is not the owner of the property, except as herein provided.

Carter Code, sec. 13; Charlton Code, sec. 13.

House *v.* Fowle (25 Pac. Repr., p. 376). Jenkins *v.* Hall (37 Pac. Repr., p. 62). Morrison *v.* Holliday (39 Pac. Repr., p. 1100). Pitman *v.* Pitman (4 Or., p. 298). Elfelt *v.* Hinch (5 Or. Repr., p. 255). Laurence *v.* Laurence (12 Pac. Repr., p. 186). King *v.* Voos (12 Pac. Repr., p. 281). Wells *v.* Applegate (10 Or. Repr., p. 521). Potter *v.* Potter (72 Pac. Repr., p. 702). Runyan *v.* Winstock (104 Pac. Repr., p. 417).

Civil remedies against each other.

SEC. 440. Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

Carter Code, sec. 14; Charlton Code, sec. 14.

Grubbe *v.* Grubbe (38 Pac. Repr., p. 182). Finlayson *v.* Finlayson (21 Pac. Repr., p. 57).

Contracts between husband and wife.

SEC. 441. A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

Carter Code, sec. 15; Charlton Code, sec. 15.

In re McCarty's estate (3 Alaska Repr., 254). Jenkins *v.* Hall (37 Pac. Repr., p. 62). Grubbe *v.* Grubbe (38 Pac. Repr., p. 182). Sears *v.* Davis (66 Pac. Repr., p. 913).

NOTE.—As to general power of married woman to contract, see secs. 494 and 495 (post, chap. 10).

May constitute each other attorney in fact.

SEC. 442. A husband or wife may constitute the other his or her attorney in fact, to control or dispose of his or her property, and may revoke the same to the same extent and manner as other persons.

Carter Code, sec. 16; Charlton Code, sec. 16.

Marks *v.* Herren (83 Pac. Repr., p. 385). Grubbe *v.* Grubbe (26 Or. Repr., p. 363.

Neither liable for the other's debts.

SEC. 443. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise provided, they are not liable for the separate debts of each other, nor is the rent or income of such property liable for the separate debts of the other.

Carter Code, sec. 17; Charlton Code, sec. 17.

Phipps *v.* Kelly (6 Pac. Repr., p. 707). Watkins *v.* Mason (4 Pac. Repr., p. 524). Black *v.* Shippy (16 Pac. Repr., 418). Davis *v.* Davis (25 Pac. Repr., p. 140). Dodd *v.* St. John (29 Pac. Repr., p. 618; 15 L. R. A., p. 717). Smith *v.* Sherwin (3 Pac. Repr., p. 686). Holmes *v.* Page (23 Pac. Repr., p. 961). Nine *v.* Starr (8 Or. Repr., p. 49).

## CHAPTER THREE.

### OF PARENTS AND CHILDREN.

Sec.
444. Parents and children liable for each other's support.
445. Maintenance of minor having property.
446. Power of mother over children.

June 6, 1900.

31 Stat. L., 496. R. S., 2d Supp., p. 1371.

Parents and children liable for each other's support.

SEC. 444. Parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

Carter Code, sec. 18; Charlton Code, sec. 18.

In re Kan-Ah-Cougua (29 Fed., 678; 1 Alaska Rep., 796). Carney *v.* Barrett (4 Or., p. 171). Baldock *v.* Johnson (13 Pac. Repr., p. 434). Albee *v.* Albee (3 Or., p. 321). Flynn *v.* Baisley (57 Pac. Repr., p. 908; 45 L. R. A., p. 645). Barrett *v.* Barrett (5 Or., p. 411). Gerber *v.* Bauerline (19 Pac. Repr., p. 849). Hedin *v.* Suburban R. R. Co. (37 Pac. Repr., p. 540). Nine *v.* Starr (8 Or., p. 49). Belknap *v.* Whitmire (72 Pac. Repr., p. 589). Livesley *v.* Heise (85 Pac. Repr., p. 509).

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Maintenance of minor having property.

SEC. 445. If any minor who has a father living has property the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the commissioner, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Carter Code, sec. 19; Charlton Code, sec. 19.

Power of mother over children.

SEC. 446. The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

Carter Code, sec. 20; Charlton Code, sec. 20.

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## CHAPTER FOUR.

### OF THE ADOPTION OF CHILDREN.


Sec.
447. Application to adopt a child.
448. Consent of parents and guardian.
449. When parent insane, etc.
450. Notice to the parent.
451. Consent of child, when necessary.
452. Decree of adoption and effect of same.
453. Status of adopted child.
454. Adoption terminates relation of parent and child.
455. Appeal from decrees of commissioners.
456. When appeal may be taken.
457. Change of name of adopted child.


June 6, 1900.
31 Stat. L., 496-497.
R. S., 2d Supp., p. 1371.
Application to adopt a child.

SEC. 447. Any inhabitant of the District may petition the commissioner in the precinct in which the child resides or may be found for leave to adopt a child not his own, and, if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Carter Code, sec. 21; Charlton Code, sec. 21.

Ferguson *v.* Jones (20 Pac. Repr., p. 842; 3 L. R. A., p. 620). Non-She-Po *v.* Wa-Win-Ta (62 Pac. Repr., p. 15).

Consent of parents and guardian.

SEC. 448. The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or, if there is no guardian, the next of kin in the District, may give such consent; or, if there is no next of kin, the commissioner may appoint some suitable person to act in the proceeding as guardian ad litem of the child, and to give or withhold such consent.

Carter Code, sec. 22; Charlton Code, sec. 22.

When parent insane, etc.

SEC. 449. If either parent is insane or imprisoned in a penitentiary under a sentence for a term not less than three years, or has willfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition, or is an unfit person to have the care and custody of the child the commissioner may proceed as if such parent were dead, and, in his discretion, may appoint some suitable person to act in the proceeding as guardian ad litem of the child and give or withhold the consent aforesaid; but in all cases notice to the parent not laboring under said

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disabilities of insanity or imprisonment mentioned in this section shall be required.

Carter Code, sec. 23; Charlton Code, sec. 23.

Notice to the parent.

SEC. 450. If a parent does not consent to the adoption of his or her child the commissioner shall order a copy of the petition and order thereon served on him and the child personally, if found in the District, and, if not, that a notice thereof be published once a week for three successive weeks in such newspaper as the commissioner directs, the last publication to be at least four weeks before the time appointed for the hearing and in all cases a copy of the petition and order shall be served on the child. Like notice shall also be published when a child has no parent living and no guardian or next of kin in said District. The commissioner may order such further notice as he deems necessary or proper.

Carter Code, sec. 24; Charlton Code, sec. 24.

Consent of child, when necessary.

SEC. 451. If the child is of the age of fourteen years or upward the adoption shall not be made without his consent, given the commissioner on privy examination.

Carter Code, sec. 25; Charlton Code, sec. 25.

Decree of adoption and effect of same.

SEC. 452. If upon such petition so presented and consented to the commissioner is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability and in all respects a proper person to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner.

Carter Code, sec. 26; Charlton Code, sec. 26.

Status of adopted child.

SEC. 453. A child so adopted shall be deemed, for the purposes of inheritance and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to heirs of the body or bodies of the parent by adoption, nor property from the lineal or collateral kindred of said parents by right of representation.

Carter Code, sec. 27; Charlton Code, sec. 27.

Adoption terminates relation of parent and child.

SEC. 454. The parents of such child shall be deprived by the said proceedings of all legal rights as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects his parents.

Carter Code, sec. 28; Charlton Code, sec. 28.

Appeal from decrees of commissioners.

SEC. 455. Any petitioner parent or other party to the proceedings may appeal to the district court from the judgment of the commissioner on such petition in like manner as appeals may be taken from judgments of such commissioner in proceedings respecting the administration of estates of decedents; and any child made the subject of such petition may, by his guardian ad litem, appeal in like manner; but no bond shall be required of or costs awarded against such child or guardian ad litem.

Carter Code, sec. 29; Charlton Code, sec. 29.

When appeal may be taken.

SEC. 456. A parent who has not, before the hearing of a petition for the adoption of his child, had personal notice thereof, may, at any

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time within one year after actual notice, apply to the district court to reverse the judgment, and the court, after due notice, may, in its discretion, reverse or modify the same.

Carter Code, sec. 30; Charlton Code, sec. 30.

Change of name of adopted child.

SEC. 457. If, in a petition for the adoption of a child, a change of the child's name is requested, the commissioner, upon adjudging the adoption, may also adjudge such change of name and grant a certificate thereof without the notice required by the following sections.

Carter Code, sec. 31; Charlton Code, sec. 31.

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## CHAPTER FIVE.

### OF THE CHANGE OF NAME.

Sec.
458. Application for change of name.
459. Proceedings on application.

June 6, 1900.

31 Stat. L., 497-498.
R. S., 2d Supp., 1373.

Application for change of name.

SEC. 458. Applications for change of names of other persons may be heard and determined by the district court. No lawful change of the name of a person, except a woman upon her marriage or divorce, shall be made in the district unless for sufficient reasons not inconsistent with the public interest and satisfactory to the court.

Carter Code, sec. 32; Charlton Code, sec. 32.

Proceedings on application.

SEC. 459. Before adjudging a change of name, except as provided in section four hundred and fifty-seven, the court shall require public notice of the application therefor to be given, that all persons may offer and show cause, if they have any, why the same should not be granted. The court shall also require public notice to be given of the change adjudged, and on return of proof thereof may grant certificate, under the seal of the court, of the name the party is to have, and which shall thereafter be his legal name.

Carter Code, sec. 33; Charlton Code, sec. 33.

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## CHAPTER SIX.

### OF THE AGE OF MAJORITY.

Sec.
460. Majority of males and females.
461. Marriage of females equivalent to majority.

June 6, 1900.

31 Stat. L., 498.
R. S., 2d Supp., p. 1373.

Majority of males and females.

SEC. 460. In the district all persons shall be deemed to have arrived at majority at the age of twenty-one years, and thereafter shall have control of their own actions and business and have all the rights and be subject to all the liabilities of citizens of full age.

Carter Code, sec. 34; Charlton Code, sec. 34.

Marriage of females equivalent to majority.

SEC. 461. All female persons shall be deemed to have arrived at the age of majority upon their being married according to law.

Carter Code, sec. 35; Charlton Code, sec. 35.

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# CHAPTER SEVEN.

## OF ESTATES IN DOWER.

Sec.
462. Dower of widow.
463. When dower shall be assigned by the district court.
464. Warrant for assignment of dower.
465. Proceedings and warrant of commissioner.
466. When property can not be divided.
467. Widow may occupy with heirs.
468. Dower, how barred by jointure.
469. Evidence of assent to jointure.
470. Pecuniary provision a bar to dower.
471. When widow may elect between jointure and dower.
472. When to elect between devise and dower.
473. When widow deemed to have elected.
474. When widow to be endowed anew.
475. Alien or nonresident entitled to dower.
476. Widow may remain in dwelling house one year.
477. Damages for withholding dower.
478. Damages, how estimated.
479. Not to include use of permanent improvements.
480. Damages against heirs.
481. Collusive recovery of dower not to prejudice infant heirs.

June 6, 1900.
31 Stat. L., 498, 499, 500.
R. S., 2d Supp., p. 1374.
Dower of widow.

SEC. 462. The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-third part in value of all the lands whereof her husband died seized of an estate of inheritance.

Carter Code, sec. 36; Charlton Code, sec. 36.

Bechtol *v.* Bechtol (2 Alaska Rep., 400). Baer *v.* Ballingall (61 Pac. Repr., p. 852). Whitaker *v.* Van Schoaick (5 Or., p. 113). Farnum *v.* Loomis (2 Or., p. 30). Love *v.* Love (8 Or., p. 23). McKay *v.* Freeman (6 Or., p. 449). Farris *v.* Hayes (9 Or., p. 81). Parish *v.* Parish (54 Pac. Repr., p. 352). Thornburn *v.* Doscher (32 Fed. Rep., p. 811). House *v.* Fowle (25 Pac. Repr., p. 376). Leonard *v.* Grant (8 Or., p. 276). Hanley *v.* Kubli (74 Pac. Repr., p. 224). In re Smith Estate (73 Pac. Repr., p. 336). Davidson *v.* Richardson (89 Pac. Repr., p. 742). Neal *v.* Davis (90 Pac. Repr., p. 69).

When dower shall be assigned by the district court.

SEC. 463. When a widow is entitled to dower in the lands of which her husband died seized, it may be assigned to her by the district court upon application of the widow or any other person interested in the lands; notice of application shall be given to such heirs, devisees, or other persons in such manner as the court shall direct.

Carter Code, sec. 37; Charlton Code, sec. 37.

McKay *v.* Freeman (6 Or., 449); Baer *v.* Ballingall (62 Pac. Repr., p. 852).

Warrant for assignment of dower.

SEC. 464. For the purpose of assigning such dower the district court shall direct a warrant to issue to three discreet and disinterested persons, as commissioners, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Carter Code, sec. 38; Charlton Code, sec. 38.

Proceedings and warrant of commissioner.

SEC. 465. The commissioners shall be sworn by any officer authorized to administer impartially oaths to discharge their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the district court; and the same being confirmed by the court and recorded, and an attested copy thereof filed in the office of the commissioner of the precinct where the lands are situated, the dower shall remain fixed and certain unless such confirmation be set aside or reversed; all costs to be apportioned in the discretion of the court.

Carter Code, sec. 39; Charlton Code, sec. 39.

When property can not be divided.

SEC. 466. When the estate or any part thereof out of which dower is to be assigned can not be equitably divided by metes and bounds,

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the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

Carter Code, sec. 40; Charlton Code, sec. 40.

Widow may occupy with heirs.

SEC. 467. When a widow is entitled to dower in the lands of which her husband died seized she may, if residing thereon, continue to occupy the same, and enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

Carter Code, sec. 41; Charlton Code, sec. 41.
Neal *v.* Davis (99 Pac. Repr., p. 69).

Dower, how barred by jointure.

SEC. 468. A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage: *Provided*, Such jointure consists of a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

*Proviso.*

Carter Code, sec. 42; Charlton Code, sec. 42.
House *v.* Fowle (25 Pac. Repr., 376).

Evidence of assent to jointure.

SEC. 469. Such assent shall be expressed, if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age by her joining with her father or guardian in such conveyance.

Carter Code, sec. 43; Charlton Code, sec. 43.

Pecuniary provision a bar to dower.

SEC. 470. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Carter Code, sec. 44; Charlton Code, sec. 44.

When widow may elect between jointure and dower.

SEC. 471. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed of the lands of her husband, but she shall not be entitled to both.

Carter Code, sec. 45; Charlton Code, sec. 45.
House *v.* Fowle (25 Pac. Repr., p. 376).

When to elect between devise and dower.

SEC. 472. If any lands be devised to a woman, or other provision be made for her in the will of her husband, expressly in lieu of dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.

Carter Code, sec. 46; Charlton Code, sec. 46.

When widow deemed to have elected.

SEC. 473. When a widow shall be entitled to an election under either of the two sections last preceding she shall be deemed to have elected to take such jointure, devise, or other provision unless within one year after the death of her husband she shall file in the district court her election in writing to relinquish her rights under the jointure, devise, or provision.

Carter Code, sec. 47; Charlton Code, sec. 47.

When widow to be endowed anew.

SEC. 474. If a woman be lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise in lieu of dower, she may

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be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Carter Code, sec. 48; Charlton Code, sec. 48.

Alien or nonresident entitled to dower.

SEC. 475. A woman being an alien shall not on that account be barred of her dower, and any woman residing out of the district shall be entitled to dower of the lands of her deceased husband lying in the district of which her husband died seized of an estate of inheritance; and the same may be assigned to her or recovered by her in like manner as if she and her deceased husband had been residents within the district at the time of his death.

Carter Code, sec. 49; Charlton Code, sec. 49.
Thornburn *v.* Doscher (32 Fed. Rep., p. 811).

Widow may remain in dwelling house one year.

SEC. 476. A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have reasonable sustenance out of the estate for one year.

Carter Code, sec. 50; Charlton Code, sec. 50.
Aiken *v.* Aiken (6 Pac. Repr., p. 682).
NOTE.—See also sec. 1647, chap. 83, Code of Civil Procedure.

Damages for withholding dower.

SEC. 477. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband died seized, she shall be entitled also to recover damages for the withholding of such dower.

Carter Code, sec. 51; Charlton Code, sec. 51.

Damages, how estimated.

SEC. 478. Such damage shall be one-third of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in an action against the heirs of her husband from the time of his death and in actions against other persons from the time of demanding her dower of such persons.

Carter Code, sec. 52; Charlton Code, sec. 52.

Damages not to include use of permanent improvements.

SEC. 479. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs or by any other person claiming title to such lands.

Carter Code, sec, 53; Charlton Code, sec. 53.

Damages against heirs.

SEC. 480. When a widow shall recover her dower in any lands aliened by the heir of her husband she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages from such grantee shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Carter Code, sec. 54; Charlton Code, sec. 54.

Collusive recovery of dower not to prejudice infant heirs.

SEC. 481. When a widow not having a right of dower shall, during the infancy of the heirs of the husband, or any of them, or of any other person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs, or such other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

Carter Code, sec. 55; Charlton Code, sec. 55.

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# CHAPTER EIGHT.

## OF ESTATE BY THE CURTESY.

Sec.
482. Husband's life estate.

SEC. 482. When any man and his wife shall be seized in her right of any estate of inheritance in lands the husband shall, on the death of his wife, hold the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

June 6, 1900.
31 Stat. L., 500.
R. S., 2d Supp., 1376.
Husband's life estate.

Carter Code, sec. 56; Charlton Code, sec. 56.

In re M'Carty's estate (3 Alaska Rep., 250, 253, 254). House *v.* Fowle (25 Pac. Repr., 376). Jenkins *v.* Hall (37 Pac. Repr., 62). Gilmore *v.* Burch (7 Or., 374). Elliott *v.* Teal (5 Saw., 252). Besser *v.* Joyce (9 Or., 310). Schooling *v.* City of Harrisburg (71 Pac. Repr., 605). Potter *v.* Potter (72 Pac. Repr., p. 702). McCreary *v.* Biggis (81 Pac. Repr., p. 356). Johnson *v.* Savage (91 Pac. Repr., p. 1082). Runyan *v.* Winstock (104 Pac. Repr., 417).

# CHAPTER NINE.

## OF GENERAL PROVISIONS CONCERNING ESTATES IN LANDS.

Sec.
483. Person in possession liable for rent.
484. Rent, how recovered.
485. Last two sections not to exclude other remedies.
486. Determination of estates at will and by sufferance.
487. Action for injury to inheritance.
488. Remedy of tenants in common.

SEC. 483. Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

June 6, 1900.
31 Stat. L., 500–501.
R. S., 2d Supp., p. 1376.
Person in possession liable for rent.

Carter Code, sec. 57; Charlton Code, sec. 57.

Holman *v.* De Linn (47 Pac. Repr., p. 508). Stewart *v.* Perkins (3 Or., p. 509). Ladd *v.* Hawkes (68 Pac. Repr., p. 422). Myer *v.* Roberts (89 Pac. Repr., p. 1051). Louie Chung *v.* Stephenson (89 Pac. Repr., 386).

SEC. 484. Such rent may be recovered in an action, and the deed or demise, or any other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Rent, how recovered.

Carter Code, sec. 58; Charlton Code, sec. 58.

SEC. 485. Nothing contained in the two preceding sections shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

Last two sections not to exclude other remedies.

Carter Code, sec. 59; Charlton Code, sec. 59.

SEC. 486. All estates at will or by sufferance may be determined by either party, by three months' notice in writing given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months the time of such notice shall be sufficient if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at

Determination of estates at will and by sufferance.

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will fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Carter Code, sec. 60; Charlton Code, sec. 60.

Rosenblatt *v.* Perkins (22 Pac. Repr., 598; 6 L. R. A., p. 257). Forsythe *v.* Pogue (36 Pac. Repr., p. 571). Wolfer *v.* Hurst (82 Pac. Repr., p. 20).

NOTE.—As to notice under forcible entry and detainer, see sections 1858 and 1859, chap. 99, of Code of Civil Procedure.

Action for injury to inheritance.

SEC. 487. A person seized of an estate in remainder or reversion may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Carter Code, sec. 61; Charlton Code, sec. 61.
Abernathy *v.* Orton (71 Pac. Repr., p. 327).

Remedy of tenants in common.

SEC. 488. A tenant in common may maintain any proper action or proceeding against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them in common; and joint tenancy is abolished, and all persons having an undivided interest in real property are to be deemed and considered tenants in common.

Carter Code, sec. 62; Charlton Code, sec. 62.

Binswanger *v.* Henninger (1 Alaska Rep., 509, 511). Garside *v.* Norval (1 Alaska Rep., 19). Reedy *v.* Wesson (1 Alaska Rep., 570). Johnson *v.* Berger (3 Alaska Rep., 154). Dettering *v.* Nordstrom (148 Fed. Repr., p. 81). Moss *v.* Rose (41 Pac. Repr., p. 666). Beers *v.* Sharpe (75 Pac. Repr., p. 717).

NOTE.—As to creation of cotenancy, see sec. 507, chap. 11, post.

## CHAPTER TEN.

### OF THE PROPERTY OF MARRIED WOMEN.


Sec.
489. Separate property of wife not subject to husband's debts.
490. Property acquired during coverture.
491. District court may adjudge that husband has abandoned wife; effect of.
492. Return of husband not to abate action.
493. Liability for civil injuries.
494. Wife's contracts binding upon her.
495. Civil disabilities removed.
496. Register of personal property.
497. Effect of registration.
498. Certified copies of register.


June 6, 1900.
31 Stat. L., 501–502.
R. S., 2d Supp., p. 1377.
Separate property of wife not subject to husband's debts.

SEC. 489. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise, or inheritance shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him.

Carter Code, sec. 63; Charlton Code, sec. 63.

Velten *v.* Carmack (31 Pac. Repr., 658). Brummett *v.* Weaver (2 Or. Repr., p. 173). Rugh *v.* Ottenheimer (6 Or. Repr., p. 231). Atteberry *v.* Atteberry (8 Or. Repr., p. 224). Besser *v.* Joyce (9 Or. Repr., p. 310). Starr *v.* Hamilton (1 Deady Repr., p. 272). Stubblefield *v.* Menzies (8 Saw. Repr., p. 41). More *v.* Fuller (6 Or. Repr., p. 272). Cross *v.* Allen (141 U. S. Repr., p. 538). Orange Nat. Bank *v.* Travers (7 Fed. Repr., p. 146). Gray *v.* Holland (9 Or. Repr., p. 512). Knoll *v.* Kiesling (35 Pac. Repr., p. 248). Campbell *v.* Snyder (41 Pac. Repr., p. 659). First Nat. Bank *v.* Leonard (59 Pac. Repr., p. 873). Howell *v.* Folsom (63 Pac. Repr., p. 116). House *v.* Fowle (25 Pac. Repr., p. 376). Booth's Will (66 Pac. Repr., p. 710). Morrison *v.* Holladay (39 Pac. Repr., p. 1100). Finlayson *v.* Finlayson (21 Pac. Repr., p. 57). Runyan *v.* Winstock (104 Pac. Repr., p. 417).

NOTE.—And see sec. 500, chap. 11, post, and cases cited.

Property acquired during coverture.

SEC. 490. All property, either real or personal, acquired by any married woman during coverture by her own labor shall not be liable for the debts, contracts, or liabilities of her husband, but shall in all

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respects be subject to the same exemptions and liabilities as property owned at the time of her marriage or afterwards acquired by gift, devise, or inheritance.

Carter Code, sec. 64; Charlton Code, sec. 64.

Elliott *v.* Hawley (76 Pac. Repr., p. 93). Hayes *v.* Horton (81 Pac. Repr., 386). Oliver *v.* Wright (83 Pac. Repr., 870). Jennings *v.* Jennings (85 Pac. Repr., p. 65).

District court may adjudge that husband has abandoned wife; effect of.

SEC. 491. When any married man residing in the district shall abandon his wife without making suitable provision for her support for a period of one year the district court may, upon her petition setting up the facts of such abandonment, verified by her own oath, summarily proceed to hear the petition and adjudge the fact as to such abandonment, which adjudication shall be conclusive as to such fact as to third persons; and if such abandonment shall be adjudged thereupon, such married woman, during the absence of her husband, may in all respects contract in relation to, sell, convey, and deal with her separate property, real and personal, in the same manner as if she were a femme sole, and may in her own name, without being joined with her husband, sue and be sued in relation to her separate property on any contract made by her after such adjudication and before the return of her husband.

Carter Code, sec. 65; Charlton Code, sec. 65.
Runyan *v.* Winstock (104 Pac. Repr., p. 417)

Return of husband not to abate action.

SEC. 492. No action wherein a married woman shall be a party, under the provisions of this code, shall be abated on the return of her husband into the district, but he may, on his application, be admitted to prosecute or defend such action jointly with her.

Carter Code, sec. 66; Charlton Code, sec. 66.
Runyan *v.* Winstock (104 Pac. Repr., 417).

Liability for civil injuries.

SEC. 493. For all civil injuries committed by a married woman damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist.

Carter Code, sec. 67; Charlton Code, sec. 67.

Wife's contracts binding upon her.

SEC. 494. Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Carter Code, sec. 68; Charlton Code, sec. 68.

Grubbe *v.* Grubbe (38 Pac. Repr., p 182). Henderson *v.* Henderson (60 Pac. Repr., p. 597; 48 L. R. A., p. 766). King *v.* Voos (12 Pac. Repr., p. 281). Elliott *v.* Hawley (76 Pac., p. 93). Powers *v.* Powers (80 Pac. Repr., p. 1058).

NOTE.—As to conveyances, etc., to husband, see sec. 441, chap. 2, ante.

Civil disabilities removed.

SEC. 495. All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband are hereby repealed; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to all courts for redress that the husband has.

Carter Code, sec. 69; Charlton Code, sec. 69.

First Nat. Bank *v.* Leonard (59 Pac. Rep., p. 873). Ingalls *v.* Campbell (24 Pac. Rep., p. 904). Booth's Will (66 Pac. Rep., p. 712). Elfelt *v.* Hinch (5 Or., p. 258). Rules *v.* Bolles (41 Pack Rep., p. 691). Keen *v.* Keen (90 Pac. Rep., p. 147). Runyan *v.* Winstock (104 Pac. Rep., p. 417).

NOTE.—And see cases cited under sec. 488, ante. See sec. 860, 863, chap. 3, Code Civil Procedure, as to actions by married women.

Register of personal property.

SEC. 496. The commissioner for each precinct shall keep a register, in which he shall enter a description of the personal estates of married women, as hereinafter directed.

Carter Code, sec. 70; Charlton Code, sec. 70.



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Effect of registration.

SEC. 497. A married woman possessed of or owning any personal property or pecuniary rights may make a descriptive list of the same, and make and subscribe on the said list an oath that the property and rights therein described belonged to her at the time of her marriage, or that she has acquired the same by her own labor, or by bequest, inheritance, or by the gift of some person named other than her husband; and the list and affidavit shall be recorded in the register, and shall be prima facie evidence of the facts therein stated, and property not so registered shall be deemed prima facie to be the property of the husband rather than of the wife.

Carter Code, sec. 71; Charlton Code, sec. 71.
Nobelitt *v.* Durban (69 Pac. Rep., p. 685).

Certified copies of register.

SEC. 498. A certified copy of the register shall be original evidence equally with the original list and affidavit, and the fees for recording and for making the certified copies of the register shall be the same as in the case of deeds.

Carter Code, sec. 72; Charlton Code, sec. 72.

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# CHAPTER ELEVEN.

## OF CONVEYANCES OF REAL PROPERTY.


Sec.
499. Conveyance, how made.
500. Conveyance of wife's property.
501. Effect of quitclaim.
502. Word "heirs" not necessary to convey fee simple.
503. Conveyance by tenant for life or years.
504. Covenants not implied.
505. Mortgage not to imply covenant to pay money.
506. Conveyance of lands held adversely by another.
507. Joint conveyance to create cotenancy.
508. Execution and acknowledgment of deeds.
509. Same in States.
510. Certificate of official character.
511. Acknowledgment of deeds in foreign country.
512. Acknowledgment by married women.
513. Conveyance by married woman residing out of district.
514. Officer taking acknowledgment must know grantor.
515. Proof of execution by subscribing witnesses.
516. Proof when witnesses dead or absent.
517. Witness to execution of deed.
518. Penalty for refusing to appear or testify.
519. Certificate of proof to be indorsed on deed.
520. Deed proved may be read in evidence.
521. Record of deeds and mortgages.
522. Certificate on conveyance.
523. Index of records.
524. Unrecorded conveyance, when void as to third persons.
525. Record or transcript of evidence.
526. Record of deeds of defeasance.
527. Record of assignment of mortgage.
528. Discharge of mortgage by marginal entry.
529. Discharge upon certificate of mortgagee.
530. Certificate of mortgagee to be recorded.
531. Penalty for refusing to discharge mortgage.
532. Power of attorney and contract may be recorded.
533. Instrument so recorded, how revoked.
534. Deeds heretofore made, etc.
535. Patents, decrees, etc., affecting lands may be recorded.
536. Record of such instrument.
537. Defective acknowledgments cured.
538. Exceptions.
539. Other defective deeds cured.
540. Judicial sales.
541. Defectively executed sales by executors and administrators.
542. Records of such deeds receivable in evidence.
543. Defective execution of conveyances by executors; decree in such cases.
544. Transcribing records for new precinct to have the effect of the original.


June 6, 1900.
31 Stat. L., 502–508.
Conveyance, how made.

SEC. 499. A conveyance of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by

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his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever. R. S., 2d Supp., p. 1378.

Carter Code, sec. 73; Charlton Code, sec. 73.

Nester *v.* Holt (1 Alaska Rep., 567). Morency *v.* Floyd (2 Alaska Rep., 194, 196). Lambert *v.* Smith (9 Or. Rep., p. 191). Field *v.* Columbet (4 Saw. Rep., p. 527). Knighton *v.* Smith (1 Or. Rep., p. 277). Edwards *v.* Perkins (7 Or. Rep., p. 149). Rowland *v.* Warren (10 Or. Rep., p. 131). Watson *v.* Dundee M. & T. Inv. Co. (8 Pac. Rep., p. 548). Bradtfeldt *v.* Cooke (40 Pac. Rep., p. 1). Carnagie *v.* Diven (49 Pac. Rep., p. 891). Swank *v.* Swank (61 Pac. Rep., p. 846). McLeod *v.* Lloyd (71 Pac. Rep., p. 795). Pierson *v.* Fisher (85 Pac. Rep., p. 61). Sappingfield *v.* King (89 Pac. Rep., p. 142). Burns *v.* Kennedy (90 Pac. Rep., p. 1102). Eadie *v.* Chambers (172 Fed. Rep., p. 73).

SEC. 500. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed if she were unmarried. Conveyance of wife's property.

Carter Code, sec. 74; Charlton Code, sec. 74.

Elliott *v.* Teal (5 Saw. Rep., p. 249). Howell *v.* Folsom (63 Pac. Rep., p. 116). Velten *v.* Carmack (31 Pac. Rep., 658; 20 L. R. A., p. 101). Moore *v.* Fuller (6 Or. Rep., p. 272). Rostein *v.* Park (62 Pac. Rep., p. 529). Moreland *v.* Brady (8 Or. Rep., p. 316). Starr *v.* Kaiser (68 Pac. Rep., p. 521).

NOTE.—Oregon statute contains following additional clause, "But the wife shall not be bound by any covenant contained in such joint deed," under which are the following cases: Frarey *v.* Wheeler (4 Or., p. 190); Burston *v.* Jackson (9 Or., p. 275).

NOTE.—See sec. 489, chap. 10, ante, as to right of married woman to sell, etc., her separate property.

SEC. 501. A deed of quitclaim and release of the form in common use shall be sufficient to pass all the real estate which the grantor could lawfully convey by a deed of bargain and sale. Effect of quit claim.

Carter Code, sec. 75; Charlton Code, sec. 75.

Crossly *v.* Campion Min. Co. (1 Alaska Rep., 391, 392). Archer *v.* Beihl (136 Fed. Rep., 113; 2 Alaska Rep., 640). Lindbloom *v.* Rocks (146 Fed. Rep., p. 797). Baker *v.* Woodward (6 Pac. Rep., p. 173). American Mtg. Co. *v.* Hutchinson (24 Pac. Rep., p. 515). Taggart *v.* Risley (4 Or. Rep., p. 235). Dolph *v.* Barney (5 Or. Rep., p. 192). Lambert *v.* Smith (9 Or. Rep., 185). Shively *v.* Welch (2 Or. Rep., p. 288). Myers *v.* Read (9 Saw. Rep., p. 17). McLeod *v.* Lloyd (71 Pac. Rep., p. 795).

SEC. 502. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any real estate hereafter executed shall pass all the real estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant. Word "heirs" not necessary to convey fee simple.

Carter Code, sec. 76; Charlton Code, sec. 76.

Morency *v.* Floyd (2 Alaska Rep., p. 194). Rowland *v.* Warren (10 Or., p. 130). Brown *v.* S. P. Co. (58 Pac. Rep., p. 1104); 47 L. R. A., p. 409).

SEC. 503. A conveyance made by a tenant for life or years purporting to grant a greater estate than he possessed or could lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. Conveyance by tenant for life or years

Carter Code, sec. 77; Charlton Code, sec. 77.

SEC. 504. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. Covenants not implied.

Carter Code, sec. 78; Charlton Code, sec. 78.

Taggart *v.* Risley (4 Or. Rep., p. 235). Edwards *v.* Perkins (7 Or. Rep., p. 149). Houston *v.* Zahm (76 Pac. Rep., p. 41).

SEC. 505. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and when Mortgage not to imply covenant to pay money.

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there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Carter Code, sec. 79; Charlton Code, sec. 79.

Lewis *v.* Wells (85 Fed., 896; 1 Alaska Rep., 789). Myer *v.* Beal (5 Or. Rep., p. 131). Kramer *v.* Wilson (90 Pac. Rep., 183). Stewart *v.* Templeton (106 Pac. Rep., 640).

Conveyance of lands held adversely by another.

SEC. 506. No grant or conveyance of land or interest therein shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Carter Code, sec. 80; Charlton Code, sec. 80.
Hardenberg *v.* Ray (33 Fed. Rep., p. 618).

Joint conveyance to create cotenancy.

SEC. 507. Every conveyance or devise of lands or interests therein made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise that the grantees or devisees shall take the lands as joint tenants.

Carter Code, sec. 81; Charlton Code, sec. 81.

Garside *v.* Norval (1 Alaska Rep., 19). Binswanger *v.* Henninger (1 Alaska Rep., 509). Reedy *v.* Wesson (1 Alaska Rep., 570). Myers *v.* Read (9 Saw. Rep., p. 13). Wheeler *v.* Taylor (52 Pac. Rep., p. 183).

NOTE.—As to remedies by tenants in common see sec. 488, chap. 9, ante.

Execution and acknowledgment of deeds.

SEC. 508. Deeds executed within the district of lands or any interest in lands therein shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the persons executing such deeds may acknowledge the execution thereof before any judge, clerk of the district court, notary public, or commissioner within the district, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof and the true date of making the same, under his hand.

Carter Code, sec. 82; Charlton Code, sec. 82.

Morency *v.* Floyd (2 Alaska Rep., 194, 197). Alaska Exploration Co. *v.* Northern M. & T. Co. (152 Fed. Rep., p. 145). Halla *v.* Lowden (170 Fed. Rep., p. 559; 95 C. C. A., p. 325). Eadie *v.* Chambers (172 Fed. Rep., p. 73; 96 C. C. A., p. 561). Goodenough *v.* Warren (5 Saw. Rep., p. 494).

Same in States.

SEC. 509. If any deed shall be executed in any State, Territory, or District of the United States, such deed may be executed according to the laws of such State, Territory, or District, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer authorized by the laws of such State, Territory, or District to take the acknowledgment of deeds therein or before any commissioner appointed for such purpose.

Carter Code, sec. 83; Charlton Code, sec. 83.
Alaska Exploration Co. *v.* Northern M. & T. Co. (142 Fed. Rep., p. 145).

Certificate of official character.

SEC. 510. In the cases provided for in the last section, unless the acknowledgment be taken before a commissioner appointed for that purpose, or before a notary public certified under his notarial seal, or before the clerk of a court of record certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed

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and acknowledged according to the laws of such State, Territory, or District.

Carter Code, sec. 84; Charlton Code, sec. 84.

Fleschner *v.* Sumpter (6 Pac. Rep., p. 506). Knighton *v.* Smith (1 Or. Rep., p. 276). Moore *v.* Thomas (1 Or. Rep., p. 201).

Acknowledgment of deeds in foreign country.

SEC. 511. If such deed be executed in any foreign country it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand; and if taken before a notary public his seal of office shall be affixed to such certificate.

Carter Code, sec. 85; Charlton Code, sec. 85.

Acknowledgment by married women.

SEC. 512. When a married woman residing in the District shall join with her husband in a deed of conveyance of real property situated within the District she shall acknowledge that she executed such deed freely and voluntarily.

Carter Code, sec. 86; Charlton Code, sec. 86.

Moore *v.* Thomas (1 Or. Rep., p. 201). Harty *v.* Ladd (3 Or. Rep., p. 353). Goodenough *v.* Warren (5 Saw. Rep., p. 494). Clark *v.* Clark (18 Pac. Rep., p. 1).

Conveyance by married woman residing out of district.

SEC. 513. When any married woman not residing in the District shall join with her husband in any conveyance of real estate situated within the District the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole.

Carter Code, sec. 87; Charlton Code, sec. 87.
Moreland *v.* Brady (8 Or. Rep., p. 305).

Officer taking acknowledgment must know grantor.

SEC. 514. No acknowledgment of any conveyance having been executed shall be taken by any officer unless he shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed such conveyance.

Carter Code, sec. 88; Charlton Code, sec. 88.
Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Proof of execution by subscribing witnesses.

SEC. 515. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgment of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

Carter Code, sec. 89; Charlton Code, sec. 89.

Morency *v.* Floyd (2 Alaska Rep., pp. 194, 198). Eadie *v.* Chambers (172 Fed. Rep., p. 73). McIntyre *v.* Kamm (7 Pac. Rep., p. 27).

Proof when witnesses dead or absent.

SEC. 516. When any grantor is dead, out of the District, or refuses to acknowledge his deed, and all the subscribing witnesses to such deed shall also be dead or reside out of the District, the same may be proved before the district court, or any judge thereof, by proving the handwriting of the grantor and of any subscribing witness thereto.

Carter Code, sec. 90; Charlton Code, sec. 90.

Eadie *v.* Chambers (172 Fed. Rep., p. 73). Wilson *v.* McEwan (7 Or. Rep., p. 105).

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Witness to execution of deed.

SEC. 517. Upon the application of any grantee, or of any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the District, or refused to acknowledge his deed, and that any witness to such conveyance refuses to appear and testify touching the execution thereof, and that such conveyance can not be proven without his evidence, any officer authorized to take the acknowledgment or proof of conveyance, except a commissioner of deeds, may issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such conveyance.

Carter Code, sec. 91; Charlton Code, sec. 91.
Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Penalty for refusing to appear or testify.

SEC. 518. Every person duly served with such subpœna who shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall forfeit to the injured party one hundred dollars, and may also be committed to prison as for a contempt by the officer who issued such subpœna, there to remain until he shall submit to answer on oath as aforesaid.

Carter Code, sec. 92; Charlton Code, sec. 92.

Certificate of proof to be indorsed on deed.

SEC. 519. Every officer who shall take the proof of any conveyance shall indorse his certificate thereon, signed by himself on the conveyance, and in such certificate shall set forth the things hereinbefore required to be done, known, or proved, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Carter Code, sec. 93; Charlton Code, sec. 93.
Alaskan Exploration Co. *v.* Northern M. & T. Co. (152 Fed. Rep., p. 145). Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Deed proved may be read in evidence.

SEC. 520. Every conveyance acknowledged or proved or certified in the manner hereinbefore prescribed by any of the officers before named may be read in evidence without further proof thereof, and shall be entitled to be recorded in the precinct in which the lands lie.

Carter Code, sec. 94; Charlton Code, sec. 94.
Valdez Bank *v.* Von Gunther (3 Alaska Rep., p. 657). Alaska Exploration Co. *v.* Northern M. & T. Co. (152 Fed. Rep., p. 145). Eadie *v.* Chambers (172 Fed. Rep., p. 73). Dolph *v.* Barney (5 Or., p. 205). Fleschner *v.* Sumpter (6 Pac., p. 506). Watson *v.* Dundee M. & T. Inv. Co. (8 Pac. Rep., p. 548). Bamberger *v.* Geiser (33 Pac. Rep., p. 609). Marx *v.* Hanthorn (30 Fed. Rep., p. 583). Ayre *v.* Hixson (98 Pac. Rep., p. 515).

Record of deeds and mortgages.

SEC. 521. Separate books shall be provided by the commissioner in each recording district or precinct for the recording of deeds and mortgages, in one of which books all deeds left with such commissioner shall be recorded at full length, with the certificates of acknowledgment or proof of the execution thereon, and in the other all mortgages left with the commissioner shall in like manner be recorded.

Carter Code, sec. 95; Charlton Code, sec. 95.
Sweetland *v.* Grants Pass New W. L. & P. Co. (79 Pac. Rep., p. 337).
NOTE.—As to instruments subject to record see secs. 379, 380, Political Code.

Certificate on conveyance.

SEC. 522. The commissioner shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and the page where it is recorded, and every conveyance shall be considered as recorded at the time it was so received.

Carter Code, sec. 96; Charlton Code, sec. 96.
Ayre *v.* Hixson (98 Pac. Rep., p. 515).

Index of records.

SEC. 523. The commissioner shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter

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alphabetically the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

Carter Code, sec. 97; Charlton Code, sec. 97.

Board of Commissioners *v.* Babcock (5 Or., p. 476). Nicklin *v.* Betts Spring Co. (5 Pac. Rep., p. 51).

Unrecorded conveyance, when void as to third persons.

SEC. 524. Every conveyance of real property within the District hereafter made which shall not be filed for record as provided in this chapter shall be void against any subsequent innocent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

Carter Code, sec. 98; Charlton Code, sec. 98.

Crossly *v.* Campion Min. Co. (1 Alaska, pp. 391, 393). Nestor *v.* Holt (1 Alaska Rep., p. 567). Eadie *v.* Chambers (172 Fed. Rep., p. 73). Musgrove *v.* Bouser (5 Or. Rep., p. 314). Moore *v.* Thomas (1 Or. Rep., p. 201). Jennings *v.* Kiernan (55 Pac. Rep., p. 443; 56 Pac. Rep., p. 72). Manaudas *v.* Mann (13 Pac. Rep., p. 449). Raymond *v.* Flavel (40 Pac. Rep., p. 158). Crossen *v.* Oliver (61 Pac. Rep., p. 885). American Mtg. Co. *v.* Hutchinson (24 Pac. Rep., p. 515). Exon *v.* Dancke (32 Pac. Rep., p. 1045). Cooper *v.* Tomason (45 Pac. Rep., p. 295). Ambrose *v.* Huntington (56 Pac. Rep., p. 513). Walker *v.* Goldsmith (12 Pac. Rep., 537). Meacham *v.* Stewart (24 Pac. Rep., p. 241). Baker *v.* Woodward (6 Pac. Rep., p. 173). Fleschner *v.* Sumpter (6 Pac. Rep., p. 506). Riddle *v.* Miller (23 Pac. Rep., p. 807). McLeod *v.* Lloyd (71 Pac. Rep., p. 795). Scott *v.* Lewis (66 Pac. Rep., p. 299). Hawley *v.* Hawley (73 Pac. Rep., p. 3). Advance Thresher Co. *v.* Esteb (69 Pac. Rep., p. 447). Randall *v.* Lingwall (73 Pac. Rep., p. 43). Miller *v.* Wattiel (75 Pac. Rep., p. 209). Kaiser *v.* Idleman (108 Pac. Rep., p. 193).

NOTE.—As to priority of lien over unrecorded conveyance, see sec. 1094, ch. 30, Code Civil Procedure. As to attaching creditor being deemed purchaser in good faith, see sec. 973, ch. 14, Code Civil Procedure. As to priority of mechanic's liens, see sec. 693, ch. 28, post.

Record or transcript of evidence.

SEC. 525. The record of a conveyance duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have been recorded, may be read in evidence in any court in the District with the like force and effect as the original instrument; but the effect of such evidence may be rebutted by other competent evidence.

Carter Code, sec. 99; Charlton Code, sec. 99.

Marx *v.* Hanthorn (30 Fed. Rep., p. 583). Stanley *v.* Smith (16 Pac. Rep., p. 174). Searles *v.* Searles (57 Pac. Rep., p. 634).

Record of deeds of defeasance.

SEC. 526. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the commissioner for the precinct where the lands lie.

Carter Code, sec. 100; Charlton Code, sec. 100.

Lindbloom *v.* Kidston (2 Alaska Rep., p. 292). Haseltine *v.* Espey (10 Pac. Rep., p. 423). Security Trust Co. *v.* Loewenberg (62 Pac. Rep., p. 647). Exon *v.* Dancke (32 Pac. Rep., p. 1045).

Record of assignment of mortgage.

SEC. 527. The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee.

Carter Code, sec. 101; Charlton Code, sec. 101.

Bamberger *v.* Geiser (33 Pac. Rep., p. 609). Watson *v.* Dundee M. & T. Inv. Co. (8 Pac. Rep., p. 548). Oregon Trust Co. *v.* Shaw (5 Saw. Rep., p. 340). Barringer *v.* Loder (81 Pac. Rep., p. 778).

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Discharge of mortgage by marginal entry.

SEC. 528. Any mortgage that has been or may hereafter be recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the commissioner or a deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Carter Code, sec. 102; Charlton Code, sec. 102.
Bamberger *v.* Gelser (33 Pac. Rep., p. 609).

Discharge upon certificate of mortgagee.

SEC. 529. Any mortgage may also be discharged upon the record thereof by the commissioner in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Carter Code, sec. 103; Charlton Code, sec. 103.

Certificate of mortgagee to be recorded.

SEC. 530. Every such certificate and the proof or acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the minute of the discharge of such mortgage made by the commissioner upon the record thereof.

Carter Code, sec. 104; Charlton Code, sec. 104.

Penalty for refusing to discharge mortgage.

SEC. 531. If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of ten days after being thereto requested in writing, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action.

Carter Code, sec. 105; Charlton Code, sec. 105.
Malarkey *v.* O'Leary (56 Pac. Rep., p. 521).

Power of attorney and contract may be recorded.

SEC. 532. Every letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands when acknowledged or proved in the manner prescribed in this title for the acknowledgment or proof of conveyances, may be recorded in the commissioner's office of any precinct in which the lands to which such power or contract relates may be situated; and when so acknowledged or proved and the record thereof when recorded, or the transcript of such record duly certified, may be read in evidence in any court in the district without further proof of the same.

Carter Code, sec. 106; Charlton Code, sec. 106.
Slover *v.* Bailey (90 Pac. Rep., p. 665).
NOTE.—As to instruments subject to record, see sec. 379, Political Code.

Instrument so recorded, how revoked.

SEC. 533. No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

Carter Code, sec. 107; Charlton Code, sec. 107.

Deeds heretofore made, etc.

SEC. 534. All conveyances of real property heretofore made and acknowledged or proved in accordance with the laws of the District in force at the time of such making and acknowledgment of proof shall have the same force as evidence and be recorded in the same

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manner and with like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Carter Code, sec. 108; Charlton Code, sec. 108.
Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Patents, decrees, etc., affecting lands may be recorded.

SEC. 535. Patents from the United States for lands within the District, notices of pending actions affecting title to real estate, judgments of courts in the District requiring the execution of a conveyance of real estate within the District, and approved lists of lands granted to the District or to corporations in the District, and conveyances executed by any officer of the District by authority of law of lands within said District, shall be entitled to be recorded in the office of the commissioner of the precinct in which the lands lie in like manner and with like effect as conveyances of land duly acknowledged, proved, or certified.

Carter Code, sec. 109; Charlton Code, sec. 109.
Meacham *v.* Stewart (24 Pac. Rep., p. 241). Walker *v.* Goldsmith (12 Pac. Rep., p. 537). Advance Thresher Co. *v.* Esteb (69 Pac. Rep., p. 447). Temple *v.* Osburn (106 Pac. Rep., p. 16).

Record of such instrument.

SEC. 536. The record of any such patent, notice of pending action, judgment, approved lists, or deeds duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have been recorded, may be read in evidence in any court in the district with like force and effect as the original thereof.

Carter Code, sec. 110; Charlton Code, sec. 110.

Defective acknowledgments cured.

SEC. 537. All defective and informal acknowledgments of deeds, powers of attorney, mortgages, or other instruments for the conveyance of land, or any interest therein, heretofore made by any person or persons in good faith, whether the acknowledgments were taken by or before any clerk, deputy clerk, or judge of any court of record within the district, or any commissioner or notary public of the district, shall be, and the same are hereby, legalized.

Carter Code, sec. 111; Charlton Code, sec. 111.
Baker *v.* Woodward (6 Pac. Rep., p. 173). Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Exceptions.

SEC. 538. This chapter is not intended to interfere with vested rights in lands or premises, arising by adverse title, acquired in good faith since the date of such defective acknowledgments.

Carter Code, sec. 112; Charlton Code, sec. 112.

Other defective deeds cured.

SEC. 539. All deeds to real property heretofore executed in the district which shall have been signed by the grantors in due form shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees without any other execution or acknowledgment whatever; and such deeds so executed shall be received in evidence in all courts in the district and be evidence of the title to the lands therein described against the grantors, their heirs and assigns.

Carter Code, sec. 113; Charlton Code, sec. 113.
Baker *v.* Woodward (6 Pac. Rep., p. 173). Stanley *v.* Smith (16 Pac. Rep., p. 174). Eadie *v.* Chambers (172 Fed. Rep., p. 73).

Judicial sales.

SEC. 540. All judicial sales of real property heretofore made in the district on proceedings to satisfy valid judgments or decrees of any court, and the moneys bidden thereon paid to the officer making such sale, and such sale shall have been confirmed by an order of the proper court, such sale shall be valid and sufficient in law to sustain a deed based on such sale, and when no such deed has been executed shall entitle such purchaser to such deed; and such deed, when executed, shall be sufficient to convey all the title of the judgment debtor in the premises so sold to the purchaser at the sale; and all defects

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and irregularities in the issuance of execution or the manner of making or conducting such sale shall be disregarded.

Carter Code, sec. 114; Charlton Code, sec. 114.

Defectively executed sales by executors and administrators.

SEC. 541. All sales heretofore made by executors and administrators of their decedents' real property in the district to purchasers for a valuable consideration, which has been paid by such purchasers to such executors or administrators or their successors in good faith, and such sales shall not have been set aside by the court, but shall have been confirmed or acquiesced in by such court, shall be sufficient to sustain an executor's or administrator's deed to such purchaser for such real property, and in case such deed shall not have been given shall entitle such purchaser to such deed; and such deed shall be sufficient to convey to such purchaser all the title that such decedent had in the real property; and all irregularities in obtaining the order of the court for such sale and all irregularities in making or conducting the same by such executor or administrator shall be disregarded.

Carter Code, sec. 115; Charlton Code, sec. 115.
Mitchell *v.* Campbell (24 Pac. Rep., p. 455).

Records of such deeds receivable in evidence.

SEC. 542. When such deeds so executed shall have been recorded in the records of deeds in the proper precinct, such record, duly certified by the commissioner, shall be evidence in all courts, and have the same effect as the original.

Carter Code, sec. 116; Charlton Code, sec. 116.

Defective execution of conveyances by executors; decree in such cases.

SEC. 543. When any real estate has been heretofore or shall be hereafter sold by any executor or administrator under or by virtue of any license or order of any commissioner in the district, and the sale shall have been approved by the commissioner, and the purchaser shall have paid the purchase money for the same, and the sale shall have been made in good faith, in order to provide for payment of the claims against the estate, and the executor or administrator shall have failed or neglected to make or execute any deed conveying such real estate to such purchaser, or if from mistake or omission in the deed or defect in its execution the same shall be inoperative, and the period of five years shall have elapsed after the making of such sale, then in such case all such sales shall be, and are hereby, confirmed and approved, notwithstanding any irregularities or informalities in the proceedings prior to the sale; and when such facts shall be made to appear in any action of an equitable nature brought to quiet title to such real property against the heirs or their assigns of the deceased person whose property shall have been thus sold, in the proper court for such suits, then such court shall make its decree quieting such title and compelling and ordering conveyances of the same to be made to such purchaser, his heirs or assigns, as if a valid contract to convey the real property had been made by such deceased person in his lifetime; and no action shall be maintained by such heirs, or their heirs or assigns, to dispossess any such purchaser, his heirs or assigns, after the expiration of five years from any such sale.

Carter Code, sec. 117; Charlton Code, sec. 117.
Mitchell *v.* Campbell (24 Pac. Rep., p. 455).

Transcribing records for new precinct to have the effect of the original.

SEC. 544. When a new precinct shall be organized in whole or in part from an organized precinct, or from territory attached to such organized precinct, for judicial purposes, all the records of deeds or other instruments relating to real property in such new precinct may be transcribed into the proper books by the commissioner of such new precinct, which records, so transcribed, shall have the same effect in all respects as original records; and the commissioner shall be paid for transcribing the same such sum as the district court may deem just and reasonable.

Carter Code, sec. 118; Charlton Code, sec. 118.

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# CHAPTER TWELVE.

## OF FRAUDULENT CONVEYANCES OF REAL PROPERTY.

Sec.
545. Void as to whom.
546. Qualifications of last section.
547. Conveyance with power of revocation.
548. Conveyances by one authorized to revoke former grants.
549. Same, when conveyance before power of revocation vested.

June 6, 1900.
31 Stat. L., 508-509.
R. S., 2d Supp., p. 1384.

Void as to whom.

SEC. 545. Every conveyance of interest in lands, or the rents or profits thereof, and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers shall be void.

Carter Code, sec. 119; Charlton Code, sec. 119.

Crossly *v.* Campion Min. Co. (1 Alaska Rep., 391, 393). McLeod *v.* Lloyd (71 Pac. Rep., 795). Burns *v.* Kennedy (90 Pac. Rep., 1102).

Qualifications of last section.

SEC. 546. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Carter Code, sec. 120; Charlton Code, sec. 120.

Crossly *v.* Campion Min. Co. (1 Alaska Rep., p. 393). Schetler *v.* Southern Oregon Co. (24 Pac. Rep., p. 25). Weber *v.* Rothchild (15 Pac. Rep., p. 650). Raymond *v.* Flavel (40 Pac. Rep., p. 158). American Mtg. Co. *v.* Hutchinson (24 Pac. Rep., p. 515). Cooper *v.* Tomason (45 Pac. Rep., p. 295). Ambrose *v.* Huntington (56 Pac. Rep., p. 513). Baker *v.* Woodward (6 Pac., p. 173). McLeod *v.* Lloyd (71 Pac., p. 795). Sears *v.* Davis (66 Pac. Rep., p. 913). Exson *v.* Dancke (32 Pac. Rep., p. 1045).

Conveyance with power of revocation.

SEC. 547. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Carter Code, sec. 121; Charlton Code, sec. 121.

Conveyances by one authorized to revoke former grants.

SEC. 548. Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

Carter Code, sec. 122; Charlton Code, sec. 122.

Same, when conveyance before power of revocation vested.

SEC. 549. If a conveyance to a purchaser under either of the last two preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Carter Code, sec. 123; Charlton Code, sec. 123.

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# CHAPTER THIRTEEN.

## OF FRAUDULENT CONVEYANCES OF PERSONAL PROPERTY.

Sec.
550. What transfers void.
551. Filing of chattel mortgages.
552. Index of chattel mortgage.
553. Mortgage to become invalid at the end of one year, unless.
554. Affidavit may be renewed.
555. Copy in evidence, what it proves.

June 6, 1900.
31 Stat. L., 509. R. S., 2d Supp., p. 1384.
What transfers void.

SEC. 550. All deeds of gift, all conveyances, and transfers of assignments, verbal or written, of goods and chattels or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Carter Code, sec. 124; Charlton Code, sec. 124.

Orton *v.* Orton (7 Or. Rep., p. 497). Jacobs *v.* Ervin (9 Or. Rep., p. 52). Bremer *v.* Fleckenstein (9 Or. Rep., p. 266). Aiken *v.* Pascall (24 Pac. Rep., p. 1039). Fisher *v.* Kelly (46 Pac. Rep., p. 146). Sabin *v.* Wilkins (48 Pac. Rep., p. 425; 37 L. R. A., p. 465). Currie *v.* Bowman (35 Pac. Rep., p. 848). Craig *v.* California Vin. Co. (46 Pac. Rep., p. 421). Leasure *v.* Forquer (41 Pac. Rep., p. 665). Jennings *v.* Fraser (80 Pac. Rep., p. 1011).

Filing of chattel mortgages.

SEC. 551. It shall be the duty of the commissioner, upon the presentation for that purpose of any mortgage or conveyance intended to operate as a mortgage of goods and chattels, or a copy of any such instrument, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

Carter Code, sec. 125; Charlton Code, sec. 125.
NOTE.—See sec. 743, ch. 31 post.

Index of chattel mortgage.

SEC. 552. Such commissioner shall enter in a book, to be provided by him for that purpose, the names of all the parties to such instrument, arranging the names of the mortgagors alphabetically, and shall note thereon the time of filing each instrument or copy.

Carter Code, sec. 126; Charlton Code, sec. 126.

Mortgage to become invalid at the end of one year, unless.

SEC. 553.—Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless within thirty days next preceding the expiration of the year the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file, as aforesaid, an affidavit setting forth the interest which the mortgagee has, by virtue of such mortgage, in the property therein mentioned, upon which affidavit the commissioner shall indorse the time when the same was filed.

Carter Code, sec. 127; Charlton Code, sec. 127.
J. I. Case Co. *v.* Campbell (13 Pac. Rep., p. 324).
NOTE.—See sec. 744, ch. 31 post.

Affidavit may be renewed.

SEC. 554. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against the creditors of the person making such mortgage, or subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with like effect.

Carter Code, sec. 128; Charlton Code, sec. 128.
NOTE.—See sec. 744, ch. 31 post.

Copy in evidence, what it proves.

SEC. 555. A copy of any such instrument, or a copy of any copy thereof so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the commissioner in whose

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office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit was received and filed according to the indorsement of the commissioner thereon, and of no other fact.

Carter Code, sec. 129; Charlton Code, sec. 129.

## CHAPTER FOURTEEN.

### OF GENERAL PROVISIONS CONCERNING FRAUDULENT CONVEYANCES AND CONTRACTS.

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556. Conveyance with intent to defraud creditors void.
557. Grant of trust to be in writing.
558. What conveyances void against heirs.
559. Fraudulent intent a question of fact.
560. Purchaser, when not affected.
561. Definition of lands, etc.
562. Definition of conveyances.

June 6, 1900.
31 Stat. L., 509-510.
R. S., 2d Supp., p. 1385.

Conveyance with intent to defraud creditors void.

SEC. 556. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded shall be void.

Carter Code, sec. 130; Charlton Code, sec. 130.

Crossly *v.* Campion Min. Co. (1 Alaska Rep., 391). Garner *v.* Wheeler (66 Pac. Rep., 812). Weber *v.* Rothchild (15 Pac. Rep., 50). Sabin *v.* Columbia Fuel Co. (34 Pac. Rep., 692). Currie *v.* Bowman (35 Pac. Rep., 848). Lyons *v.* Leahy (13 Pac. Rep., 643). The Holladay Case (27 Fed. Rep., 849). Philbrick *v.* O'Connor (13 Pac. Rep., 612). Marks *v.* Crow (13 Pac. Rep., 55). Jolly *v.* Kyle (39 Pac. Rep., 999). Flynn *v.* Baisley (57 Pac. Rep., 908; 45 L. R. A., 645). Feldman *v.* Nicolai (40 Pac. Rep., 1011). U. S. *v.* Griswold (8 Fed. 496, 556). Richmond *v.* Bloch (60 Pac. Rep., 385). Perkins *v.* McCullough (49 Pac. Rep., 861). Elfelt *v.* Hinch (5 Or. Rep., 255). Davis *v.* Davis (25 Pac. Rep., 140). Wright *v.* Craig (66 Pac. Rep., 807). Mendenhall *v.* Elwert (59 Pac. Rep., 805). Fleischner *v.* Bank of McMinnville (60 Pac. Rep., 603). Sears *v.* Davis (66 Pac. Rep., 913). Morton *v.* Denham (64 Pac. Rep., 384). Taylor *v.* Miles (25 Pac. Rep., 143). Scoggins *v.* Schloath (15 Pac. Rep., 635). Archer *v.* Lapp (6 Pac. Rep., 672). Sauers *v.* Beechler (63 Pac. Rep., 195). Sabin *v.* Wilkins (48 Pac. Rep., 425; 37 L. R. A., 465). O'Connell *v.* Hanson (44 Pac. Rep., 387). Inman *v.* Sprague (47 Pac. Rep., 826). Dawson *v.* Coffey (8 Pac. Rep., 838). Dawson *v.* Sims (13 Pac. Rep., 506). Matlock *v.* Babb (49 Pac. Rep., 873). Bennett *v.* Minott (44 Pac. Rep., 283). Crawford *v.* Beard (8 Pac. Rep., 537). Weaver *v.* Owens (18 Pac. Rep., 579). Bradtfeldt *v.* Cooke (40 Pac. Rep., 1). Sabin *v.* Anderson (49 Pac. Rep., 870). Wyatt *v.* Wyatt (49 Pac. Rep., 855). Fisher *v.* Kelly (46 Pac. Rep., 146). Leasure *v.* Forquer (41 Pac. Rep., 655). Geary *v.* Porter (21 Pac. Rep., 442). Haseltine *v.* Espey (10 Pac. Rep., 423). Rostein *v.* Park (62 Pac. Rep., 529). Brown *v.* Case (69 Pac. Rep., 43). Goodale *v.* Wheeler (68 Pac. Rep., 753). Hesse *v.* Barrett (68 Pac. Rep., 751). Jennings *v.* Frazier (80 Pac. Rep., 1011). U. S. Mtg. & Trust Co. *v.* Marquam (69 Pac. Rep., 37). Wood *v.* Fisk (77 Pac. Rep., 128, 738). Robson *v.* Hamilton (69 Pac. Rep., 651). McLeod *v.* Lloyd (71 Pac. Rep., 795). Walker *v.* Harold (74 Pac. Rep., 705). Beers *v.* Aylsworth (69 Pac. Rep., 1025). Moore, Schafer Mfg. Co. *v.* Billings (80 Pac. Rep., 422). Lewis *v.* First Nat. Bank (78 Pac. Rep., 990). Seed *v.* Jennings (83 Pac. Rep., 872). Livesly *v.* Heise (85 Pac. Rep., 509). Stubling *v.* Wilson (90 Pac. Rep., 1011). Leavengood *v.* McGee (91 Pac. Rep., 453). Stearns *v.* Wollenberg (92 Pac. Rep., 1079).

Grant of trust to be in writing.

SEC. 557. Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

Carter Code, sec. 131; Charlton Code, sec. 131.

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What conveyances void against heirs.

SEC. 558. Every conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors, purchasers, or mortgagees.

Carter Code, sec. 132; Charlton Code, sec. 132.

Fraudulent intent a question of fact.

SEC. 559. The question of fraudulent intent in all cases arising under the provisions of this code shall be deemed a question of fact, and not of law.

Carter Code, sec. 133; Charlton Code, sec. 133.

Garnier *v.* Wheeler (66 Pac., Rep., 812). Coolidge *v.* Heneky (8 Pac. Rep., 281). Lyons *v.* Leahy (13 Pac. Rep., 643). Philbrick *v.* O'Connor (13 Pac. Rep., 612). Weaver *v.* Owens (18 Pac. Rep., 579). U. S. *v.* Griswold (8 Fed. Rep., 503, 569). Weber *v.* Rothchild (15 Pac. Rep., 650). David *v.* Moore (79 Pac. Rep., 415). Martin *v.* Eagle Creek Dev. Co. (69 Pac. Rep., 216). Kabat *v.* Moore (85 Pac. Rep., 506).

Purchaser, when not affected.

SEC. 560. The provisions of chapters thirteen, fourteen, and fifteen of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Carter Code, sec. 134; Charlton Code, sec. 134.

Lindbloom *v.* Rocks (146 Fed. Rep., 660). Garnier *v.* Wheeler (66 Pac. Rep., 812). Lyons *v.* Leahy (13 Pac. Rep., 643). Coolidge *v.* Heneky (8 Pac. Rep., 281). Philbrick *v.* O'Connor (13 Pac. Rep., 612). Weaver *v.* Owens (18 Pac. Rep., 579). Scott *v.* Lewis (66 Pac. Rep., 299). Advance Thresher Co. *v.* Esteb (69 Pac. Rep., 72). Randall *v.* Lingwall (73 Pac. Rep., 43). Miller *v.* Wattier (75 Pac. Rep., 209).

Definition of lands, etc.

SEC. 561. The term "lands" as used in chapters thirteen, fourteen, and fifteen of this title shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in lands" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

Carter Code, sec. 135; Charlton Code, sec. 135.

Definition of conveyances.

SEC. 562. The term "conveyance," as used in chapters thirteen, fourteen, and fifteen of this title shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

Carter Code, sec. 136; Charlton Code, sec. 136.
Lambert *v.* Smith (9 Or., 194).

## CHAPTER FIFTEEN.

### OF THE DISPOSITION OF PROPERTY BY WILL.


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June 6, 1900.
31 Stat. L., 510, 511, 512, 513. R. S., 2d Supp., p. 1386.

Disposition of property by will.

SEC. 563. Every person of twenty-one years of age and upwards, of sound mind, may by last will devise all his or her property, real or personal, saving in the case of a married man to the widow her dower, and saving in the case of a married woman any rights which her husband may have as tenant by the curtesy.

Carter Code, sec. 137; Charlton Code, sec. 137.

Hubbard *v.* Hubbard (7 Or. Rep., 42). Rothrock *v.* Rothrock (30 Pac. Rep., 453). Chrisman *v.* Chrisman (18 Pac. Rep., 66). In re Cline's Will (33 Pac. Rep., 542). Greenwood *v.* Cline (7 Or. Rep., 26). Potter *v.* Jones (25 Pac. Rep., 769). In re Darst's Will (54 Pac. Rep., 947). Humphreys *v.* Taylor (5 Or. Rep., 261). Hardenberg *v.* Ray (33 Fed. Rep., 812; 151 U. S. Rep., 222). Gerrish *v.* Gerrish (8 Or. Rep., 351). Morse *v.* Macrum (29 Pac. Rep., 615). Skinner *v.* Lewis (67 Pac. Rep., 951). Ames *v.* Ames (67 Pac. Rep., 737). Richardson *v.* Orth (66 Pac. Rep., 925). In re Holman's Estate (70 Pac. Rep., 908). McCrary *v.* Biggers (81 Pac. Rep., 356). In re Pickett's Will (89 Pac. Rep., 377). Sappingfield *v.* King (89 Pac. Rep., 142). In re Turner's Will (93 Pac. Rep., 461).

Will, how executed.

SEC. 564. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

Carter Code, sec. 138; Charlton Code, sec. 138.

Pool *v.* Buffum (3 Or. Rep., 438). Moreland *v.* Brady (8 Or. Rep., 312). Luper *v.* Werts (23 Pac. Rep., 850). Ames *v.* Ames (67 Pac. Rep., 737). Skinner *v.* Lewis (67 Pac. Rep., 951). Montague *v.* Schiefflin (80 Pac. Rep., 654). Richardson *v.* Orth (66 Pac. Rep., 925).

When will revoked by marriage and birth of issue.

SEC. 565. If, after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Carter Code, sec. 139; Charlton Code, sec. 139.

Marriage of unmarried person revokes will.

SEC. 566. A will made by an unmarried person shall be deemed revoked by his or her subsequent marriage.

Carter Code, sec. 140; Charlton Code, sec. 140.
Booth's Will (66 Pac. Rep., 710).
NOTE.—Oregon statute uses words "unmarried woman" instead of "unmarried person."

Bond, etc., to convey property devised.

SEC. 567. A bond covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement, for the specific performance or otherwise, against devi-

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sees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Carter Code, sec. 141; Charlton Code, sec. 141.

Charge or incumbrance upon property devised.

SEC. 568. A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

Carter Code, sec. 142; Charlton Code, sec. 142.

Children, etc., to have portion of estate.

SEC. 569. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

Carter Code, sec. 143; Charlton Code, sec. 143.

Gerrish *v.* Gerrish (8 Or., 351). | Worley *v.* Taylor (28 Pac. Rep., 449).
Northrop *v.* Marquam (18 Pac. Rep., 903). | Neal *v.* Davis (99 Pac. Rep., 69).

Effect of advancement.

SEC. 570. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

Carter Code, sec. 144; Charlton Code, sec. 144.

When issue of deceased devisee to take estate.

SEC. 571. When any estate shall be devised to any child or grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

Carter Code, sec. 145; Charlton Code, sec. 145.

Canceling of second will, when to revive first.

SEC. 572. If after making any will the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Carter Code, sec. 146; Charlton Code, sec. 146.

Mariner or soldier may dispose of wages and personal property.

SEC. 573. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

Carter Code, sec. 147; Charlton Code, sec. 147.
Montague *v.* Schieffiin (80 Pac. Rep., 654).

Nuncupative will.

SEC. 574. No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Carter Code, sec. 148; Charlton Code, sec. 148.

Probate of nuncupative will.

SEC. 575. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued,

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accompanied with a copy thereof, to call the widow or next of kin to the deceased that they may contest the will if they think proper.

Carter Code, sec. 149; Charlton Code, sec. 149.

Law of the place, when to govern and when not.

SEC. 576. Any person not an inhabitant of, but owning property, real or personal, in the district may devise or bequeath such property by last will executed according to the laws in force in the district, State, or Territory in which the will may be executed.

Carter Code, sec. 150; Charlton Code, sec. 150.
In re Grayson's Will (34 Pac. Rep., 358). Montague *v.* Schieffiin (80 Pac. Rep., 654).

Copies of foreign wills.

SEC. 577. If such will be probated in any State, Territory, or other district of the United States, or in any foreign country or State, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the certificate is in due form, and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in the district, and shall be admitted in evidence in the same manner and with like effect.

Carter Code, sec. 151; Charlton Code, sec. 151.
Montague *v.* Schieffiin (80 Pac. Rep., 654).

Foreign will, how contested.

SEC. 578. Any such will may be contested and annulled within the same time and in the same manner as wills executed and proven in the district.

Carter Code, sec. 152; Charlton Code, sec. 152.

Devisee or legatee may prove.

SEC. 579. If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

Carter Code, sec. 153; Charlton Code, sec. 153.
In re Pickett's Will (89 Pac. Rep., 377).

When such witness to have share of estate.

SEC. 580. If any such witness would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

Carter Code, sec. 154; Charlton Code, sec. 154.

If sufficient other witnesses, devisee may take.

SEC. 581. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this code, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

Carter Code, sec. 155; Charlton Code, sec. 155.

Creditor may be witness.

SEC. 582. If by any will any real estate be charged with any debt, and any creditor whose debt is so charged has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Carter Code, sec. 156; Charlton Code, sec. 156.



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Legatee how made competent.

SEC. 583. If any person has attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have released such bequest or legacy and renounced without valuable consideration all benefits under said will, such person shall be admitted as a witness to the execution of such will.

Carter Code, sec. 157; Charlton Code, sec. 157.
Hagan *v.* Wyman (2 Or. Rep., 304).

Deceased legatee, when deemed legal witness.

SEC. 584. If any legatee or devisee who has attested or shall attest the execution of any will shall have died or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Carter Code, sec. 158; Charlton Code, sec. 158.

Legatee, when not entitled to legacy.

SEC. 585. No person to whom any estate, gift, or appointment shall be given or made which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in section five hundred and ninety-nine any profit or benefit of or from such estate, interest, gift, or appointment so given or made to him by any such will, or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Carter Code, sec. 159; Charlton Code, sec. 159.

Estate for life, remainder in fee.

SEC. 586. If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

Carter Code, sec. 160; Charlton Code, sec. 160.
Winchester *v.* Hoover (70 Pac. Rep., 1035). Buchanan *v.* Scholderman (1 Pac. Rep., 899).

When fee passes.

SEC. 587. A devise of real property shall be deemed and taken as a devise of all the estate or interest of the testator therein subject to his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest; and any estate or interest in real property acquired by anyone after the making of his or her will shall pass thereby, unless it clearly appear therefrom that such was not the intention of the testator; nor shall any conveyance or disposition of real property by anyone after the making of his or her will prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

Carter Code, sec. 161; Charlton Code, sec. 161.
Hardenberg *v.* Ray (151 U. S. Rep., p. 125).

Contribution among legatees.

SEC. 588. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Carter Code, sec. 162; Charlton Code, sec. 162.

Definition of will.

SEC. 589. The term "will," as used in this chapter, shall be so construed as to include all codicils as well as wills.

Carter Code, sec. 163; Charlton Code, sec. 163.
Montague *v.* Schieffiin (80 Pac. Rep., 654).

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Construction of wills.

SEC. 590. All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them.

Carter Code, sec. 164; Charlton Code, sec. 164.

Shadden *v.* Hambree (18 Pac. Rep., 572). Moreland *v.* Brady (8 Or., 303). Portland Trust Co. *v.* Beatie (52 Pac. Rep., 89). Jasper *v.* Jasper (22 Pac. Rep., 152).

Life estate by will with remainder to heirs.

SEC. 591. Where any estate, real, or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

Carter Code, sec. 165; Charlton Code, sec. 165.

When will must be in writing.

SEC. 592. A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law.

Carter Code, sec. 166; Charlton Code, sec. 166.
Jones *v.* Dove (6 Or., 191).

How written will may be revoked or altered.

SEC. 593. A written will can not be revoked or altered otherwise than by another written will, or another writing of the testator, declaring such revocation or alteration, and executed with the same formalities required by law for the will itself; or unless the will be burnt, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person the direction and consent of the testator, and the fact of such injury or destruction shall be proved by at least two witnesses.

Carter Code, sec. 167; Charlton Code, sec. 167.

In re McCarty's Estate (3 Alaska Rep., 719). Booth's Will (66 Pac. Rep., 250).

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## CHAPTER SIXTEEN.

### OF THE DESCENT OF REAL PROPERTY.

Sec.
594. Real property, to whom it descends.

June 6, 1900.
31 Stat. L., 513–514.
R. S., 2d Supp., p. 1389.
Real property, to whom it descends.

SEC. 594. When any person shall die seized of any real property, or any right thereto, or entitled to any interest therein in fee simple or for the life of another, not having lawfully devised the same, such real property shall descend, subject to his debts, as follows:

(1) In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally; or, otherwise, they shall take according to the right of representation.

(2) If the intestate shall leave no lineal descendants, such real property shall descend to his wife; or if the intestate be a married woman and leave no lineal descendants, then such real property shall descend to her husband; and if the intestate leave no wife nor husband, then such real property shall descend to his or her father.

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(3) If the intestate shall leave no lineal descendants, neither husband nor wife nor father, such real property shall descend in equal shares to the brothers and sisters of the intestate and to the issue of any deceased brother or sister by right of representation; but if the intestate shall leave a mother also, she shall take an equal share with such brothers and sisters.

(4) If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, brother, nor sister, living at his or her death, such real property shall descend to his mother, to the exclusion of the issue of the deceased brothers or sisters of the intestate.

(5) If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property shall descend to his or her next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor.

(6) If the intestate shall leave one or more children, and the issue of one or more deceased children, and any of such surviving children shall die under age without having been married, all such real property that came to such deceased child by inheritance from such intestate shall descend in equal shares to the other children of such intestate, and to the issue of any other children of such intestate who shall have died, by right of representation. But if all the other children of such intestate shall be also dead, and any of them shall have left issue, such real property so inherited by such deceased child shall descend to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise, they shall take by right of representation.

(7) If the intestate shall leave no lineal descendants or kindred, such real property shall escheat to the United States.

Carter Code, sec. 168; Charlton Code, sec. 168.

Binswanger *v.* Henninger (1 Alaska Rep., 511). Bechtol *v.* Bechtol (2 Alaska Rep., 401). Non-She-Po *v.* Wa-Win-Ta (62 Pac. Rep., 15). Cutting *v.* Cutting (6 Fed. Rep., 268). Jenkins *v.* Hall (37 Pac. Rep., 62). Wheeler *v.* Taylor (52 Pac. Rep., 183). Stitt *v.* Bush (29 Pac. Rep., 737). Smallman *v.* Powell (23 Pac. Rep., 249). Grant *v.* Paddock (47 Pac. Rep., 712). State *v.* Simmons (79 Pac. Rep., 498). Kallyton *v.* Kallyton (74 Pac. Rep., 491; 78 Pac. Rep., 332).

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# CHAPTER SEVENTEEN.

## OF THE DISTRIBUTION OF PERSONAL PROPERTY.

Sec.
595. Distribution of personal property.
596. Advancement to widow.

June 6, 1900.
31 Stat. L., 514-515.
R. S., 2d Supp., 1390.
Distribution of personal property.

SEC. 595. When any person shall die possessed of any personal property, or of any right to or interest therein, not having lawfully bequeathed the same, such personal property shall be applied and distributed as follows:

(1) If the intestate shall leave a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered in pursuance of chapter eighty-three of the Code of Civil Procedure; and this allowance shall be made as well when the widow

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waives the provision made for her in the will of her husband as when he dies intestate.

(2) The personal property of the intestate remaining after such allowance shall be applied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

(3) The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this code, and in the like proportion or share, except as herein otherwise provided.

(4) If the intestate shall leave a husband and issue, such husband shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a husband and no issue, such husband shall receive the whole of such residue of personal property.

(5) If the intestate leave a widow and issue, such widow shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a widow and no issue, such widow shall be entitled to receive the whole of such residue of the personal property.

(6) If there be no husband, widow, or kindred of the intestate, the whole of such residue shall escheat to the United States.

Carter Code, sec. 169; Charlton Code, sec. 169.

State *v.* Simmonds (79 Pac. Rep., 498). State *v.* O'Day (69 Pac. Rep., 542). State *v.* Tarpley (69 Pac. Rep., 542). Casto *v.* Murray (81 Pac. Rep., 883).

In re McCarty's Estate (3 Alaska Report., 254): The husband conveyed by quitclaim the upper half of his placer mining claim to his wife, who leased it for mining purposes until the minerals should all be extracted. Subsequently the wife died intestate and the husband was appointed administrator of her estate. He received her royalty of the gold and gold dust extracted from her part of the mining claim by her lessees, and on final account retained one half thereof as surviving husband and paid the other half to her children and heirs. Upon appeal from the action of the probate court refusing to approve this distribution, Held, that the gold dust delivered into the hands of the administrator by the wife's lessees was "personal property," and under section 595 of the Civil Code of Alaska the surviving husband was entitled to receive one-half.

Advancement to widow.

SEC. 596. If the intestate leave a widow and issue, and any of such issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the part to be given to the widow, but such widow shall only be entitled to receive the one-half the personal property owned by the husband at the time of his death.

Carter Code, sec. 170; Charlton Code, sec. 170.

## CHAPTER EIGHTEEN.

### OF MISCELLANEOUS PROVISIONS CONCERNING THE DESCENT AND DISTRIBUTION OF PROPERTY.


Sec.
597. Status of illegitimate children.
598. Mother heir to illegitimate child; effect of marriage of parents.
599. Degrees of kindred, how computed.
600. Advancement to issue.
601. When advancement greater or less than share.
602. Rule for computing value of advancement, etc.
603. Grants and gifts to heir.
604. When value of advancement expressed.
605. Advancement to heirs.
606. Estates by curtesy and dower not affected.
607. Certain terms defined. Posthumous children.


June 6, 1900.
31 Stat. L., 515–516.
R. S., 2d Supp., p. 1391.
Status of illegitimate children.

SEC. 597. An illegitimate child shall be considered an heir of its mother, and shall inherit or receive her property, real or personal, in whole or in part, as the case may be, in like manner as if such child had been born in lawful wedlock; but such child shall not be entitled

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to inherit or receive, as representing his mother, any property, real or personal, of the kindred, either lineal or collateral, of such mother: *Provided*, When the parents of such child have formally married, such child shall not be regarded as illegitimate within the meaning of this code, although such formal marriage shall be adjudged to be void.

Carter Code, sec. 171; Charlton Code, sec. 171.
McCall *v.* Bain (45 Fed. Rep., 838).

Mother heir to illegitimate child; effect of marriage of parents.

SEC. 598. If an illegitimate child shall die intestate, without leaving a widow, husband, or lawful issue, the property, real and personal, of such intestate shall descend to or be received by the mother; but if after the birth of an illegitimate child the parents thereof shall intermarry, such child shall be considered legitimate to all intents and purposes.

Carter Code, sec. 172; Charlton Code, sec. 172.

Degrees of kindred, how computed.

Sec. 599. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

Carter Code, sec. 173; Charlton Code, sec. 173.
Smallman *v.* Powell (23 Pac. Rep., 249).

Advancement to issue.

SEC. 600. Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descendent shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant toward his share of the intestate's estate.

Carter Code, sec. 174; Charlton Code, sec. 174.
Belle *v.* Brown (61 Pac. Rep., 1024). | Seed *v.* Jennings (83 Pac. Rep., 872).

When advancement greater or less than share.

SEC. 601. If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, such heir shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

Carter Code, sec. 175; Charlton Code, sec. 175.

Rules for computing value of advancement, etc.

SEC. 602. If any such advancement is made in real property the value thereof shall, for the purposes of the last section, be considered as part of the real property to be divided; and if the advancement be either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heir so advanced, such heir shall not refund any part of it, but shall take or receive so much less out of the whole part of the estate, as the case may be, as will make the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

Carter Code, sec. 176; Charlton Code, sec. 176.

Grants and gifts to heir.

SEC. 603. All grants and gifts shall be deemed to be made in advancement if so expressed in the grant or gift, or if so charged, in writing, by the intestate, or acknowledged, in writing, to be so made by the child or other descendant to whom it is made, and not otherwise.

Carter Code, Sec. 177; Charlton Code, sec. 177.

When value of advancement expressed.

SEC. 604. If the value of the property, real or personal, so advanced be expressed in the conveyance or writing whereby the same is granted or given, or in the charge thereof made by the intestate, or in the acknowledgment made by the party receiving it, in the divi-

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sion and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

Carter Code, sec. 178; Charlton Code, sec. 178.

Advancement to heirs.

SEC. 605. If any child or lineal descendant to whom an advancement is made shall die before the intestate, leaving issue, such advancement shall be deemed made to such issue, and the division and distribution of the estate shall be made accordingly.

Carter Code, sec. 179; Charlton Code, sec. 179.

Estates by curtesy and dower not affected.

SEC. 606. Nothing contained in this chapter shall affect or impair the estate of a husband as tenant by the curtesy, nor that of a widow as tenant in dower.

Carter Code, sec. 180; Charlton Code, sec. 180.

Certain terms defined.

SEC. 607. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the term "real property" includes all lands, tenements, and hereditaments, and rights thereto, and all interests therein, whether in fee simple or for the life of another. The term "personal property" includes all goods and chattels, moneys, credits, and effects of whatever nature not included in the term "real property." Inheritance "by right of representation" takes place when the lineal descendant of any deceased heir takes the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living. For the purposes of this code, a posthumous child is to be deemed living at the death of its parent.

Posthumous children.

Carter Code, sec. 181; Charlton Code, sec. 181.

Cascaden *v.* Dunbar (2 Alaska Rep., 411). M'Quillan *v.* Tanana Electric Co. (3 Alaska Rep., 117). In re McCarty's Estate (3 Alaska Rep., 251). Edwards *v.* Perkins (7 Or. Rep., 155). Garrett *v.* Clark (5 Or. Rep., 469). Eadie *v.* Chambers (172 Fed. Rep., 73).

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## CHAPTER NINETEEN.

### OF ESCHEATS.


Sec.
608. When property escheats.
609. Proceedings to obtain possession.
610. Governor must take steps to recover.
611. Court may appoint receiver.
612. All persons claiming interest may defend.
613. Persons may claim proceeds, when; proceedings thereon.
614. Proceedings in case of personal property.
615. Escheated property held by bank.


June 6, 1900.
31 Stat. L., 516–519.
R. S., 2d Supp., p. 1392.

When property escheats.

SEC. 608. When any person shall die without heirs, leaving any real or personal property in the District, the same shall escheat to and become the property of the United States.

Carter Code, sec. 182; Charlton Code, sec. 182.
State *v.* Simmons (79 Pac. Rep., 498).

Proceedings to obtain possession.

SEC. 609. The United States may maintain any action or proceeding necessary to recover the possession of any such property, or for the enforcement or protection of its rights thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the United States attorney, by the leave and under the direction of the Attorney General, and not otherwise.

Carter Code, sec. 183; Charlton Code, sec. 183.
State *v.* O'Day (69 Pac. Rep., 542). | State *v.* Tarpley (56 Pac. Rep., 542).

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Governor must take steps to recover.

SEC. 610. When the governor is informed or has reason to believe that any real or personal property has escheated to the United States, he shall direct the United States attorney to file an information in behalf and in the name of the United States in the district court, setting forth a description of the estate, the name of the person last seized, the name of the occupant or the person in possession and claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof the United States has right by law to such estate. Upon such information a summons must issue to such person, requiring him to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the United States, which order must be published for at least six consecutive weeks from the date thereof in a newspaper published in the precinct, if one be published therein, and in case no newspaper is published in the precinct, then in such newspaper in the District as the court by order may direct.

Carter Code, sec. 184; Charlton Code, sec. 184.

State *v.* Simmons (79 Pac. Rep., 542). State *v.* Tarpley (56 Pac. Rep., 498). State *v.* O'Day (69 Pac. Rep., 542).

Court may appoint receiver.

SEC. 611. The court, upon the information being filed, with and upon the application of the United States attorney, either before or after answer, upon notice to the party claiming such estate, if known, may, upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, and receive the rents and profits of the same, until the title to such estate is finally settled.

Carter Code, sec. 185; Charlton Code, sec. 185.

All persons claiming interest may defend.

SEC. 612. All persons named in the information may appear and answer, and may traverse or deny the facts stated in the information, the title of the United States to the lands and tenements therein mentioned at anytime before the time for answering expires; and any other person claiming an interest in such estate may appear and be made a defendant by motion for that purpose in open court within the time allowed for answering; and if no person appears and answers within the time, then judgment must be rendered that the United States be seized of the lands and tenements in such information claimed. But if any person appears and denies the title set up by the United States, or traverses any material fact set forth in the information, the issue of the fact must be tried as issues of facts are tried in civil actions. If, after the issues are tried, it appears from the facts found that the United States has good title to the estate in the information mentioned, or any part thereof, judgment must be rendered that the United States be seized thereof, and recover costs of action against the defendant. In any judgment rendered, or that has heretofore been rendered, by any court of competent jurisdiction, escheating real property to the United States, on motion of the United States attorney the court shall make an order that the real property be sold by the marshal at public sale, and upon such terms, whether for cash or credit, or both, as shall be deemed for the best interests of the United States. And if such court shall deem it most advantageous for the United States, it may direct that the lands be surveyed into lots and sold in specific portions, upon such terms as to payments therefor as may be deemed best for the United States. After giving such notice of the time and place of sale as may be prescribed by the court in the order, the marshal shall, within ten days after such sale,

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make a report thereof to the court, and, upon hearing the report, the court may examine the same and witnesses in relation thereto, and if the proceedings of such sale are unfair, or the sum or sums bid are disproportionate to the value of the portion sold, and if it appear that a greater sum can be obtained for the property, or any portion thereof, exceeding such bid at least ten per centum, exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had, and the new sale shall be conducted in all respects as if no previous sale had taken place. But if it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum than ten per centum, exclusive of the expense of a new sale, can not be obtained, the court must make an order confirming the sale and directing the marshal in the name of the United States to execute to the purchaser or purchasers a conveyance of the property sold; and the conveyance shall vest in the purchaser or purchasers all the right and title of the United States therein; and also directing that the purchaser or purchasers shall execute and deliver to the marshal his or their note or notes, payable to the United States for the deferred payments with a first mortgage upon the property conveyed, to secure the deferred payments. And the marshal shall, out of the proceeds of such sale, pay the cost of the proceedings incurred on behalf of the United States, including the expense of making such sale, and the remainder, together with the notes and mortgages, he shall deliver to the United States attorney, taking his receipt therefor, and the United States attorney shall deposit the sum with the clerk of the district court, who shall pay the same into the Treasury of the United States in the manner provided by law for other moneys recovered in actions by the United States.

Carter Code, sec. 186; Charlton Code, sec. 186.

Persons may claim proceeds, when; proceedings thereon.

SEC. 613. Within ten years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the district court showing his claim or right to the property or the proceeds thereof. A copy of such petition must be served upon the United States attorney at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him; or if it has been sold and the proceeds paid into the Treasury of the United States, then it must order that a copy of the judgment be forwarded to the Secretary of the Treasury. All persons who fail to appear and file their petition within the time limited by law are forever barred, saving, however, to infants and persons of unsound mind the right to appear and file their petitions at any time within the time limited, or one year after their respective disabilities cease.

Carter Code, sec. 187; Charlton Code, sec. 187.
Young *v.* State (59 Pac. Rep., 812; 47 L. R. A., 548.)

Proceedings in case of personal property.

SEC. 614. In all cases of personal estate the court shall direct by order that the same be sold by the marshal, as upon execution, and the proceeds be applied to the payment of the costs incurred by the United States and the costs and charges of making such sale, and the residue to the district attorney, who shall pay the same to the clerk of the court as hereinbefore provided.

Carter Code, sec. 188; Charlton Code, sec. 188.

Escheated property held by bank.

SEC. 615. When the governor is informed or has reason to believe that any bank, banker, or banking institution in the District now has

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or holds on deposit or otherwise any fund, funds, or other property of any kind or nature which has escheated to the District, he shall direct the United States attorney to file in the district court an information or bill of discovery, with proper interrogatories to be answered by the owner, agent, or manager of such bank or banking institution, and upon the filing of such information or bill the court shall order and direct, at a time to be designated in the bill, that the owner, agent, or manager of such bank or banking institution shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from such answer that the bank, banker, or banking institution has any property in its possession which has or may escheat to the United States, it shall direct the bank, banker, or banking institution forthwith to bring the same into such court, and the court shall proceed to dispose of the property as provided elsewhere in this chapter.

Carter Code, sec. 189; Charlton Code, sec. 189.
State *v.* Security Savings Co. (43 Pac. Rep., 160).

## CHAPTER TWENTY.

### OF PROMISSORY NOTES AND BILLS OF EXCHANGE.


Sec.
616. Promissory notes in writing payable to bearer, effect of.
617. Action by payees, indorsees, and holders, nature and extent of.
618. Note to the order of maker or fictitious person, effect of.
619. Grace, when allowed.
620. Qualification of last section.
621. Acceptance to be in writing.
622. Damages on foreign bills.
623. Damages on inland bills of exchange.


June 6, 1900.
31 Stat. L., 519-520.
R. S., 2d Supp., 1395.
Promissory notes in writing payable to bearer, effect of.

SEC. 616. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

Carter Code, sec. 190; Charlton Code, sec. 190.

Wilson *v.* Wilson (38 Pac. Rep., 189). Galoway *v.* Bartholomew (74 Pac. Rep., 467). Kitchen *v.* Holmes (70 Pac. Rep., 830). Haines *v.* Cadwell (66 Pac. Rep., 910). Smith *v.* Bayer (79 Pac. Rep., 497). Lazelle *v.* Miller (67 Pac. Rep., 307). Carroll *v.* Nodine (69 Pac. Rep., 51). Welch *v.* Kinney (80 Pac. Rep., 648). Rende *v.* Pac. Coast H. S. Assn. (66 Pac. Rep., 443). Delsman *v.* Friedlander (66 Pac. Rep., 297). Creecy *v.* Joy (66 Pac. Rep., 295). Hughes *v.* Ladd (69 Pac. Rep., 42). Lawrey *v.* Sterling (69 Pac. Rep., 460). Gardner *v.* Wiley (79 Pac. Rep., 341). Leedy *v.* Wood (88 Pac. Rep., 585). Baines *v.* Coos Bay R. & E. R. & Nav. Co. (89 Pac. Rep., 371). Fish *v.* First Nat. Bank (150 Fed. Rep., 534).

Action by payees, indorsees, and holders, nature and extent of.

SEC. 617. The payee and indorsee of every such note payable to him or his order, and the holder of every such note payable to bearer, may maintain an action for the sum of money therein mentioned, in like manner as in case of an inland bill of exchange and not otherwise.

Carter Code, sec. 191; Charlton Code, sec. 191.

Wilson *v.* Wilson (38 Pac. Rep., 189). Brown *v.* Feldwert (80 Pac. Rep., 414). Sturgis *v.* Baker (72 Pac. Rep., 744). Patterson *v.* Patterson (67 Pac. Rep., 664). Overholt *v.* Dietz (72 Pac. Rep., 695). Sears *v.* Daley (73 Pac. Rep., 5). Smith *v.* Dayer (79 Pac. Rep., 497). Martin *v.* Martin (72 Pac. Rep., 639). Lassas *v.* McCarthy (84 Pac. Rep., 76). McLeod *v.* Despain (90 Pac. Rep., 492). Fish *v.* First Nat. Bank (150 Fed. Rep., 534).

Note to the order of maker or fictitious person, effect of.

SEC. 618. Such note made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity, as against

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the maker and all persons having knowledge of the facts, as if payable to bearer.

Carter Code, sec. 192; Charlton Code, sec. 192.
Shirley *v.* Bush (18 Pac. Rep., 351).

Grace, when allowed.

SEC. 619. On all bills of exchange payable at a future day certain within the District, and on all negotiable promissory notes, orders, and drafts payable at a future day certain within the District, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or after sight.

Carter Code, sec. 193; Charlton Code, sec. 193.
McMillan *v.* Abbott (1 Or., 258).

Qualification of last section.

SEC. 620. The provisions of the preceding section shall not extend to any bill of exchange, note, or draft payable at sight or on demand.

Carter Code, sec. 194; Charlton Code, sec. 194.

Acceptance to be in writing.

SEC. 621. No person within the District shall be charged as an acceptor of a bill of exchange unless his acceptance shall be in writing, signed by himself or his lawful agent.

Carter Code, sec. 195; Charlton Code, sec. 195.
Allen *v.* Leavens (37 Pac. Rep., 488; 26 L. R. A., 620).

Damages on foreign bills.

SEC. 622. Whenever any bill of exchange drawn or indorsed within the District and payable without the limits of the United States shall be duly protested for nonacceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of demand, and damages at the rate of ten per centum upon the contents thereof, together with interest on the contents, to be computed from the date of the protest; and the amount of contents, damages, and interest shall be in full of all damages, charges, and expenses.

Carter Code, sec. 196; Charlton Code, sec. 196.

Miller *v.* American Gold Mining Co. (3 Alaska Report, 3). A complaint to recover the amount of a foreign bill of exchange should allege demand, nonpayment, and protest in order to recover damages under sections 622 and 623 of the Civil Code of Alaska; otherwise it is bad on demurrer.

Damages on inland bills of exchange.

SEC. 623. If any bill of exchange drawn upon any person, firm, or body corporate out of the District, but within some State or Territory of the United States, for the payment of money, shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay the bill, with legal interest, according to its tenor, and five per centum damages, together with costs and charges of protest.

Carter Code, sec. 197; Charlton Code, sec. 197.
Miller *v.* American Gold Mining Co. (3 Alaska Rep., 1, 2, 3, 4).

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## CHAPTER TWENTY-ONE.

### INCORPORATION OF TOWNS.


Sec.
624. Incorporation of towns in; petition; order of court; hearing; election; notice of election.
625. Qualified voters; ballot; judges of election; certificate of votes cast to be in triplicate; recording result of election.
626. Canvass of votes; oath; annual election; terms of councilmen.
627. Powers of town councilmen; rules, etc.; officers; municipal, etc., elections; streets, etc.; trails and wagon roads; fire protection, water supply, etc.; taxes;


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Sec.
dog tax; school tax; exemption; exception; drunkenness, etc.; jail, etc.; roads, schools, etc.; school districts in incorporated towns to be established by common council; school board; term of office; one-year term added; vacancies; expenditures of school fund; bond; teachers; reports of school-board clerks; sanitation.
628. Majority vote; bond issue, etc., prohibited.
629. Duties of clerk; treasurer; assessor; attorney; oath; compensation; removal from office.
630. Use of license funds; receipts.
631. Repeal.
632. Valdez may issue bonds to construct dikes, etc.; election notice, registration, etc.

Apr. 28, 1904.

33 Stat. L., 529–531.

Incorporation of towns in.

Vol. 31, p. 520, amended.

Petition.

Order of the court.

Hearing.

Election.

Notice of election.

SEC. 624. Any community in the District of Alaska having three hundred or more permanent inhabitants may incorporate as a municipal corporation termed a town in the manner hereinafter provided. A petition praying for such incorporation shall first be presented to the judge of the United States district court presiding over the court in the judicial division in which the community seeking incorporation is located, which petition shall be signed by at least sixty male adults, bona fide residents of such community, and shall specify the boundaries and the number of inhabitants of the proposed corporation, and shall also specify the name by which it is to be known, and such other facts as may tend to show good grounds for such incorporation. The judge shall thereupon, by an order, fix the time and place for considering said petition, which time shall not be less than thirty days after the date of such order. A printed or typewritten copy of said order shall be posted in three of the most public places within the limits of the territory proposed to be incorporated at least thirty days prior to the time fixed for considering said petition. At the time and place fixed for considering said petition the judge shall give a reasonable hearing to those who are in favor of and to those who are opposed to the same; and if he is satisfied that it is for the best interest and welfare of the community to be incorporated as a town he shall, by an order, so adjudge; and he may, by the order, change or modify the proposed boundaries. He shall also, by said order, designate the name and the boundaries of the corporation, and the time and place when and where an election shall be held to determine whether the people of the community desire to be incorporated; and he shall also, by said order, appoint three qualified voters to act as judges of such election. A printed or typewritten copy of said order shall be posted at three of the most public places within the limit of the proposed corporation at least thirty days prior to the day of election, and such posting shall be deemed a sufficient notice of such election.

Amends Carter Code, sec. 198; Charlton Code, sec. 198.

Bates *v.* Mayor and Council of Nome (1 Alaska Rep., 208). Brace *v.* Solner (1 Alaska Rep., 364). Town of Nome *v.* Schneider (3 Alaska Rep., 59). In re incorporation of Haines Mission (3 Alaska Rep., 588).

Qualified voters.

Ibid.

Ballot.

SEC. 625. Every male person twenty-one years of age who is a citizen of the United States or has declared his intention to become such, and who has resided continuously one year next preceding the election in the District of Alaska, and six months next preceding the election within the limits of the proposed corporation, shall be qualified to vote at said or any subsequent municipal election. Said election shall be by printed or written ballot in the following form, to wit:

"FOR INCORPORATION OF THE TOWN OF

(name of proposed corporation),"

or

"AGAINST INCORPORATION OF THE TOWN OF

(name of proposed corporation)."

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Judges of election.

The qualified electors of the community proposed to be incorporated may also at said election by a separate ballot choose a common council of seven members who shall be qualified electors of the community. The said judges of election shall before entering upon the duties of their office take an oath in writing to faithfully and impartially discharge the duties of their trust, and they shall duly canvass and compile the vote cast and issue under their hands and seals a certificate in triplicate showing the number of votes cast in favor of incorporation and the number of votes cast against incorporation. One of said triplicate certificates, together with all the ballots cast and the oaths of the judges of elections, shall immediately be filed with the clerk of the district court in the division in which the community proposed to be incorporated is situate, another of said certificates shall be filed with the secretary of the District of Alaska, and the third of said certificates shall be filed with the commissioner of the precinct in which said community is located. If it shall appear from the said triplicate certificate of election filed with the clerk of the district court as aforesaid that two-thirds or more of the votes cast at said election were in favor of incorporation and that the provisions of law relating to incorporation have been substantially complied with then the district judge shall, by an order in writing entered in the records of the court, duly adjudge and declare that the community in which such election has been held is, and shall be deemed to be, a municipal corporation under the name of "The town of (here insert name) in the District of Alaska," and the same shall from thenceforth be deemed a municipal corporation possessed of the powers and privileges hereinafter prescribed, and such other powers as may be given by law.

Certificate of votes cast to be in triplicate.

Recording result of election.

Amends Carter Code, sec. 199; Charlton Code, sec. 199.

Bates *v.* Mayor and Council of Nome (1 Alaska Rep., 208, 214). Brace *v.* Solner (1 Alaska Rep., 364).

NOTE.—Wherever the word "District" appears is meant "Territory." Act May 7, 1906, providing for a Delegate, expressly states "Territory."

Canvass of votes.

SEC. 626. The said judges of election shall also canvass the votes given at said election for members of the common council, and shall declare the seven candidates who have received the greatest number of votes for such office duly elected and shall issue and deliver to them certificates of their election. In case the community in which said election has been held becomes incorporated as aforesaid, the members of the common council chosen as aforesaid, as well as the members of such council chosen at subsequent elections, shall, before entering upon the duties of their office, severally take an oath in writing to honestly and faithfully discharge the duties of their trust, which oaths shall be filed with the clerk of the town. An annual election shall be held each and every year, on the first Tuesday of April, in every incorporated town in the District of Alaska for the election of members of the common council. The members of the council chosen at the first election shall hold their office until the next annual election and until their successors are elected and qualified, and the members of the council chosen at subsequent elections shall hold their office for the term of one year and until their successors are elected and qualified.

Ibid.

Oath.

Annual election.

Terms of councilmen.

Amends Carter Code, sec. 200; Charlton Code, sec. 200.

Bates *v.* Mayor and Council of Nome (1 Alaska Rep., 208, 214, 215). Brace *v.* Solner (1 Alaska Rep., 364). Krause *v.* Town of Juneau (2 Alaska Rep., 634).

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Apr. 28, 1904.
33 Stat. L., 531–532.

SEC. 627. That the said common council shall have and exercise the following powers:

Powers of town councilmen.
Vol. 32, p. 945, amended.
Rules, etc.

First. To adopt rules and by-laws for their proceedings, and to elect one of their number president of the council, who shall also be ex officio mayor of the town and who when chosen shall continue to hold the position of president and ex officio mayor during the term for which the council was elected, and who shall take care that the ordinances and resolves of the council be faithfully executed.

Officers.

Second. To appoint a clerk, a treasurer, an assessor, a municipal magistrate, a municipal attorney, a chief of police, and such other officials or employees as may be necessary, but none of such officers or employees shall be appointed for a longer term than one year.

Municipal, etc., elections.

Third. To make suitable provision for municipal and other elections, and to appoint three judges and two clerks of election for each polling place in the town.

Streets, etc.

Fourth. To provide for the location, construction, and maintenance of the necessary streets, alleys, crossings, sidewalks, sewers, and wharves. If such street, alley, sidewalk, or sewer, or parts thereof, is located and constructed upon the petition of the owners of two-thirds in value of the property abutting upon and affected by such improvement, then two-thirds of the cost of the same may, in the discretion of the council, be collected by the assessment and levy of a tax against the abutting property, and such tax shall be a lien upon the same and may be collected as other real estate taxes are collected.

Trails and wagon roads.

Fifth. To provide for the location and construction, for a limited distance and to a limited extent, of trails and wagon roads outside of the limits of the town, but leading to and from the same, where such roads and trails are necessary for promoting the welfare and prosperity of the town, but no money shall be expended for such purpose except upon the unanimous vote of the entire council unless the qualified voters of the town have at an annual election by ballot, by a two-thirds vote, voted in favor of such expenditure.

Fire protection, water supply, etc.

Sixth. To provide for fire protection, water supply, lights, wharfage, public health, and police protection, and the relief of the destitute and indigent.

Taxes.

Seventh. To assess, levy, and collect a poll tax of not less than two dollars nor more than four dollars per year on all male residents over twenty-one and under fifty years of age who are not active members, serving without pay, of a volunteer fire company in the town. Such tax shall be a lien upon and may be collected from any real or personal property of the person against whom the tax is levied except wearing apparel and household furniture less than three hundred dollars in value.

Dog tax.

Eighth. To levy a tax of not more than two dollars per year upon each dog against the person who keeps the same and to provide for the impounding or killing of the dog in case the tax is not paid or in case the dog is vicious or dangerous to life or health.

School tax.

Ninth. To assess, levy, and collect a general tax for school and municipal purposes, not to exceed two per centum of the assessed valuation, upon all real and personal property, and to declare the same a lien upon such property and to enforce the collection of such lien by foreclosure, levy, distress, and sale: *Provided, however*, That all property belonging to the municipality, all property used exclusively for religious, educational, and charitable purposes, and the household furniture of the head of a family or a householder not exceeding two hundred dollars in value, shall be exempt from such tax: *Provided further*, That the laws exempting certain property

*Provisos.*
Exemption.

Exception.

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from levy and sale on execution shall not apply to said taxes or the collection of the same.

Tenth. To prohibit drunkenness, gambling, houses or places of ill fame, disorderly conduct, or conduct endangering the public peace, public health, or public safety, to define such offenses, and to prescribe the punishment therefor, but such punishment shall not exceed in any case a fine of one hundred dollars or imprisonment in the municipal jail not exceeding ninety days, or both, in the discretion of the court, together with the costs of prosecution. The costs of such imprisonment shall be borne by the municipality and not by the United States. All fines and costs imposed and collected for violation of municipal ordinances shall belong to the municipality and be paid over to its treasurer. The municipal magistrate shall have jurisdiction of all actions for violation of municipal ordinances, and appeals shall lie from his judgments to the district court in the same manner as appeals from the judgments of ex officio justices of the peace.

Drunkenness, etc.

Eleventh. To make due provision for the maintenance of a municipal jail and to provide the same with a keeper.

Jail, etc.

Mar. 3, 1905.
33 Stat. L., 1262.

Twelfth. To establish school districts, to provide the same with suitable schoolhouses, and to maintain public schools therein and to provide the necessary funds for the schools; but such schools when established shall be under the supervision and control of a school board of three members, consisting of a director, a treasurer, and a clerk, to be elected annually by the vote of all adults who are citizens of the United States or who have declared their intention to become such and who are residents of the school district. The members of said board first elected shall hold their offices for the term of one, two, and three years, respectively, and until their successors are elected and qualified, and one member of such board shall be elected each year thereafter and shall hold his office for a period of three years and until his successor is elected and qualified; and they shall each, before entering upon the duties of their office, take an oath in writing to honestly and faithfully discharge the duties of their trust. In case a vacancy in the membership of said board occurs from death, resignation, removal, or other cause, such vacancy may be filled by a special election, upon ten days' notice, called by the remaining members of the board upon the petition of five qualified voters. All money available for school purposes, except for the construction and equipment of schoolhouses and the acquisition of sites for the same, shall be expended under the direction of said board, and the treasurer of said board shall be the custodian of said money, and he shall, before entering upon the duties of his office, give his bond, with sufficient sureties, to the school district, in such sum as the common council may direct, and subject to its approval, but not less than twice the amount that may come into his hands as treasurer, conditioned that he will honestly and faithfully disburse and account for all money that may come into his hands as such treasurer. The said board shall have the power to hire and employ the necessary teachers, to provide for heating and lighting the schoolhouse, and in general to do and perform everything necessary for the due maintenance of a proper school."

Schools, etc.
School districts in incorporated towns to be established by common council.
School board.
Term of office.
One-year term added.
*Ante*, p. 617.
Vacancies.
Expenditures of school fund.
Bond.
Teachers.

Jan. 27, 1905.
33 Stat. L., 619.

Thirteenth. That the clerks of school districts in the incorporated towns shall, at the end of each school term, report to the governor in writing the length of the term, the wages paid the teacher, the number of pupils in attendance, and the average daily attendance during the term.

Reports of school-board clerks.

Apr. 28, 1904.
33 Stat. L., 532.

Fourteenth. To take such action by ordinance, resolution, or otherwise, as may be necessary to protect and preserve the lives, the health,

Sanitation.

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the safety, and the well-being of the people in the town and to publish all ordinances.

Amends Carter Code, secs. 201, 202; Charlton Code, secs. 201, 202.

NOTE.—For provision for schools prior to act of June 6, 1900, providing for municipalities and schools therein, see title "Education," and note under sec. 308.

The act of June 6, 1900, is amended by the act of Mar. 3, 1901 (31 Stat. L., 1438), act of Mar. 2, 1903 (32 Stat. L., 944), act of Apr. 28, 1904 (33 Stat L., 529), act of Jan. 27, 1905 (33 Stat. L., 617), and act of Mar. 3, 1905 (33 Stat. L., 1262).

Town of Nome *v.* Schneider (3 Alaska Rep., 60). In re Bruno Munro (1 Alaska Rep., 279, 281). McIntosh *v.* Town of Nome (1 Alaska Rep., 492). Town of Nome *v.* Lang (1 Alaska Rep., 593). Chambers *v.* Solner (1 Alaska Rep., 271, 274). Town of Nome *v.* Reed (1 Alaska Rep., 395, 397). Brace *v.* Solner (1 Alaska Rep., 361, 364, 368, 369). Krause *v.* Town of Juneau (2 Alaska Rep., 633, 634). Conradt *v.* Miller (2 Alaska Rep., 433). Ketchikan Co. *v.* Citizens Co. (2 Alaska Rep., 120). Bates *v.* Mayor and Council of Nome (1 Alaska Rep., 215).

Apr. 28, 1904.
31 Stat. L., 532.
Majority vote.

SEC. 628. The common council may exercise their powers by ordinance or resolution, but no ordinance or resolution shall be valid unless adopted by a vote of four members of the council, at a meeting where not less than five members are present.

Bond issue, etc., prohibited.

The council shall have no authority to issue bonds or incur any bonded indebtedness, nor shall they have authority to incur a greater indebtedness or liability of any kind in any year than the current revenues of the municipality for that year.

Charlton Code, sec. 5, p. 108.

Apr. 28, 1904.
33 Stat. L., 533.
Duties of clerk.

SEC. 629. The clerk appointed by the council shall attend its meetings, keep a full record of all its proceedings and of all disbursements of public money, and he shall also file and duly keep all the records and public papers of the town, and he shall to all intents and purposes be deemed to be the clerk and bookkeeper of the town and shall officiate as such.

Treasurer.

The treasurer appointed by the council shall be the custodian of all the moneys of the town: *Provided*, That said treasurer shall pay over to the treasurer of the school district all moneys available for the maintenance of schools.

*Proviso.*

Duties.

He shall keep an itemized, full, and correct account of all moneys received and disbursed, and he shall pay out no money except upon an order signed by the ex officio mayor and countersigned by the clerk and specifying the object and purpose of the payment, and no such order shall be issued except upon vote of four members of the council at a meeting in which five members are present. He shall before entering upon the duties of his office give his bond to the town, with sufficient sureties to be approved by the council, in such sum as the council may direct, not less, however, than twice the amount of the public money that may come into his hands as treasurer during his term, which bond shall be conditioned that he will faithfully and honestly collect, keep, and disburse all the moneys belonging to the town, which bond shall be filed with and kept by the clerk of the town.

Assessor.

The assessor appointed by the council shall once each year, at such time as the council may direct, duly list and assess all the taxable property of the town at its just and fair value. He shall file such list and assessment as soon as completed with the clerk of the town, and shall serve a notice of the filing of the same upon each person residing in the town whose property has been assessed. The council may review and revise the assessment, and may, upon proper evidence and conformable to justice, increase or diminish the same in individual cases, and when so revised and reviewed, and finally approved by the council, the same shall be deemed to be the true basis for the levy and assessment of taxes.

Attorney.

The municipal attorney shall be the legal adviser of the council and the other town officials in reference to their official duties, and he shall represent the town as attorney in all civil

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and criminal prosecutions in which the town is interested. All officers appointed by the council shall, before entering upon the duties of their office, severally take an oath, in writing, to honestly, faithfully, and impartially perform the duties of their office, which oath shall be filed with the clerk of the town. The council shall, at the beginning of the term of each officer appointed by them, by ordinance fix his compensation for the term, which compensation when so fixed shall be neither increased nor diminished during the term, nor shall said officers be entitled to receive, in any form or shape, any other or additional compensation. Any officer of the town, whether elective or appointive, may be removed from office for malfeasance, misfeasance, or nonfeasance in office, by the district court, in proceedings initiated upon the complaint of a taxpayer, and in which the officer complained of shall have full opportunity to appear and defend himself.

Oath.

Compensation.

Removal from office.

Amends Carter Code, sec. 202; Charlton Code, sec. 6, p. 109, and sec. 203.

Chambers *v.* Solner (1 Alaska Rep., 274, 276). Brace *v.* Solner (1 Alaska Rep., 362, 364, 366, 368, 371). School Board *v.* Common Council (2 Alaska Rep., 356, 357).

Use of license funds.

SEC. 630. All license moneys collected by the clerk of the district court from any person for any business, trade, or occupation carried on within the limits of any incorporated town in the District of Alaska pursuant to the provisions of an act entitled "An act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said district," approved March third, eighteen hundred and ninety-nine, and all acts or parts of acts amendatory thereof, shall by said clerk be paid over to the treasurer of such town, to be used for school and municipal purposes within the town. The clerk shall take a receipt for such money in triplicate, one of which receipts shall be filed with the Secretary of the Treasury, one with the Attorney General of the United States, and one shall be retained by the clerk.

Ibid.

Vol. 30, p. 1336; vol. 32, p. 946.

Receipts.

Charlton Code, sec. 7, p. 109.

Apr. 28, 1904.

33 Stat. L., 534.

SEC. 631. All acts and parts of acts inconsistent with this act are, to the extent of such inconsistency, hereby repealed; and the provisions of this act shall apply to and govern all municipal corporations heretofore created in the District of Alaska.

Repeal.

Charlton Code, sec. 8, p. 110.

Feb. 6, 1909.

35 Stat. L., 600.

SEC. 632. That the incorporated town of Valdez, Alaska, is hereby authorized and empowered to issue its bonds in any sum not exceeding fifteen thousand dollars, for the purpose of constructing dikes, dams, and other protection to keep the waters from the Valdez Glacier from running into, over, and upon the town of Valdez.

Valdez may issue bonds to construct dikes, etc.

Before said bonds shall be issued a special election shall be ordered by the common council of the town of Valdez, at which election the question whether such bonds shall be issued shall be submitted to the qualified electors of said town of Valdez whose names appear on the last assessment roll of said town for municipal taxation. Thirty days' notice of any such election shall be given by publication thereof in a newspaper printed and published and of general circulation in said town before the day fixed for such election.

Special election.

Notice.

The registration for such election, the manner of conducting the same, and the canvass of the returns of said election shall be, as nearly as practicable, in accordance with the requirements of law in general or special elections in said municipality, and said bonds shall be issued only upon the condition that a majority of the votes cast at such election in said town shall be in favor of issuing said bonds.

Registration for election, etc.

Majority votes required.

The bonds above specified, when authorized to be issued as hereinbefore provided, shall bear interest at a rate not to exceed six per

Interest payments.



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Denomination.

centum per annum, payable semiannually, and shall not be sold for less than their par value with accrued interest and shall be in denominations not exceeding one thousand dollars each, the principal to be due in ten years from date thereof: *Provided, however,* That the common council of said town of Valdez may reserve the right to pay off such bonds in their numerical order at the rate of five thousand dollars thereof per annum from and after the expiration of five years from their date. Principal and interest shall be payable in lawful money of the United States of America at the office of the town treasurer of the town of Valdez, Alaska, or at such bank in the city of New York, in the State of New York, or such place as may be designated by the common council of the town of Valdez; the place of payment to be mentioned in said bonds: *And provided further,* That each and every such bond shall have the written signature of the mayor and clerk of said town of Valdez and also bear the seal of said town.

*Provisos.* Payment of bonds.

Signatures to bonds.

Restriction on use of proceeds.

No part of the funds arising from the sale of said bonds shall be used for any purpose other than that specified in this act.

Sale and disbursements.

Said bonds shall be sold only in such amounts as the common council shall direct, and the proceeds thereof shall be disbursed under the limitations hereinbefore imposed and under the order and direction of said common council from time to time as the same may be required for the purposes aforesaid.

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# CHAPTER TWENTY-TWO.

## OF EMINENT DOMAIN.


Sec.
633. Purposes for which it may be exercised.
634. What estates in land may be acquired by condemnation.
635. Private property defined; classes enumerated.
636. Facts necessary to be found before condemnation.
637. Parties may make location and enter to make surveys.
638. Jurisdiction of the district court.
639. The complaint and its contents.
640. Summons, what to contain; how issued and served.
641. Who may defend.
642. Appointment of commissioners, etc.
643. Meeting of commissioners.
644. Date with respect to which compensation shall be assessed, and measure of damages.
645. Report of commissioners.
646. Appeal.
647. New proceedings to cure defective title.
648. Payment of damages.
649. To whom paid.
650. Final order of condemnation.
651. Putting plaintiff in possession.
652. Payment of costs.
653. Rules of practice.


June 6, 1900.

31 Stat. L., 522–527.
R. S., 2d Supp., 1398.

Purposes for which it may be exercised.

SEC. 633. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) All public uses authorized by the Government of the United States.

(2) Public buildings and grounds for the use of the District, and all other public uses authorized by Congress or other legislative authority of the District.

(3) Public buildings and grounds for the use of any precinct, city, town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any precinct, city, town, or other municipal division, whether incorporated or unincorporated; raising the banks of streams, removing

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obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any precinct, city, town, or other municipal division, whether incorporated or unincorporated, or the inhabitants thereof, which may be authorized by Congress or other legislative authority of the district.

(4) Wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water.

(5) Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water.

(6) Private roads leading from highways to residences, mines, or farms.

(7) Telephone or electric-light lines.

(8) Telegraph lines.

(9) Sewerage of any precinct, city, town, village, or other municipal village (supposedly meant "division"), whether incorporated or unincorporated, or any subdivision thereof, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the district or to any college or university.

(10) Tramway lines.

(11) Electric power lines.

Carter Code, sec. 204; Charlton Code, sec. 204.

Alaska Pacific Ry. & Term. Co. *v.* Copper River & N. E. Ry. Co. (3 Alaska Rep., 343). Steele *v.* Tanana Mines Ry. Co. (2 Alaska Rep., 456). Code Civil Procedure Montana (2211). Less *v.* City of Butte (72 Pac. Rep., 140). State *v.* Dist. Court (88 Pac. Rep., 44). Helena Power Trans. Co. *v.* Spratt (88 Pac. Rep., 73). Miocene Ditch Co. *v.* Jacobson (146 Fed. Rep., 680; 77 C. C. A., 106). Spratt *v.* Helena Power Trans. Co. (94 Pac. Rep., 631). Ashby *v.* City of Juneau (174 Fed. Rep., 737; 98 C. C. A., 476).

What estates in land may be acquired by condemnation.

SEC. 634. That the following is a classification of the estates and rights in lands subject to be taken for public use:

(1) A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of débris or tailings of a mine.

(2) An easement when taken for any other use.

(3) The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Carter Code, sec. 205; Charlton Code, sec. 205.
Code Civil Procedure Montana (2212).

Private property defined; classes enumerated.

SEC. 635. The private property which may be taken under this chapter includes:

(1) All real property belonging to any person.

(2) Lands belonging to the District or to any precinct, city, town, village, or other municipal division, whether incorporated or unincorporated, not appropriated to some public use.

(3) Property appropriated to public use; but such property must not be taken unless for a more necessary purpose than that to which it has already been appropriated.

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(4) Franchises for roads, bridges, and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use.

(5) All rights of way for any and all the purposes mentioned in section six hundred and thirty-three, and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(6) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

Carter Code, sec. 206; Charlton Code, sec. 206.
Code Civil Procedure Montana (2213).

Facts necessary to be found before condemnation.

SEC. 636. Before property can be taken it must appear:

(1) That the use to which it is to be applied is a use authorized by law.

(2) That the taking is necessary to such use.

(3) If already appropriated to some public use that the public use to which it is to be applied is a more necessary public use.

The plaintiff or defendant or any party interested in the proceedings can appeal to the United States Circuit Court of Appeals for the Ninth Circuit from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter.

Carter Code, sec. 207; Charlton Code, sec. 207.
Code Civil Procedure Montana (2214). City of Helena *v.* Rogan (68 Pac. Rep., 798). State *v.* Dist. Ct. (74 Pac. Rep., 200). Van Dyke *v.* Midnight Sun M. & D. Co. (177 Fed. Rep., 85).

Parties may make location and enter to make surveys.

SEC. 637. In all cases where land is required for public use, the District, or its agents in charge of such use, may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section six hundred and forty-two. The District, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness, or malice.

Carter Code, sec. 208; Charlton Code, sec. 208.
Code Civil Procedure Montana (2215).

Jurisdiction of the district court.

SEC. 638. All proceedings under this chapter must be brought in the district court of the District. They must be commenced by filing a complaint and issuing a summons thereon.

Carter Code, sec. 209; Charlton Code, sec. 209.
Code Civ. Proced. Mont. (2216). City of Helena *v.* Rogan (68 Pac. Rep., 798).

The complaint and its contents.

SEC. 639. The complaint must contain:

(1) The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

(2) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

(3) A statement of the right of the plaintiff.

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(4) If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

(5) A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the precinct and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a precinct, town, or settlement, the chief executive officer of the same, or, if the same be unincorporated, any three citizens authorized thereunto by a written instrument, signed by not less than one-half of the whole number of male inhabitants of such precinct, town, or settlement over the age of twenty-one years, which fact shall be set forth in the complaint, may be named as plaintiff.

Carter Code, sec. 210; Charlton Code, sec. 210.
Code Civ. Proced. Mont. (2217). Miocene Ditch Co. *v.* Lyng (2 Alaska | Rep., 267).

Summons, what to contain; how issued and served.

SEC. 640. Upon the filing of such complaint a summons shall be issued, which shall contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned, as prayed for in the complaint. Such summons shall, in other particulars, be in the form of a summons in a civil action, and shall be served in like manner upon each defendant named therein at least twenty days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants upon whom service of the summons had been made.

Carter Code, sec. 211; Charlton Code, sec. 211.
Code Civ. Proceed. Mont. (2218).

Who may defend.

SEC. 641. All persons named in the complaint in occupation of, or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, answer, or demur, each in respect to his own property or interest.

Carter Code, sec. 212; Charlton Code, sec. 212.
Code Civ. Proced. Mont. (2219). Yellowstone Park R. Co. *v.* Bridger Coal | Co. (87 Pac. Rep., 963).

Appointment of commissioners, etc.

SEC. 642. The court or judge has power:

(1) To regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in subdivision five of section six hundred and thirty-five of this chapter, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law.

(2) To determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws relating to the district.

(3) To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(4) If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in the precinct, commissioners to ascertain and determine the amount to be paid by the plaintiffs to

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each owner or other person interested in such property as damages, by reason of the appropriation of such property, and specifying the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

Carter Code, sec. 213; Charlton Code, sec. 213.

Code Civ. Proced. Mont. (2220). | Pac. Rep., 631).
Spratt *v.* Helena Pr. Trans. Co. (94 |

Meeting of commissioners.

SEC. 643. The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully and impartially discharge the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

(1) The value of the property sought to be appropriated, and all improvements thereon, pertaining to the realty and each and of every separate estate and interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

(2) If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

(3) Separately, how much the portion not sought to be condemned, and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subdivision two the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

(4) If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

(5) As far as practicable compensation must be assessed for each source of damage separately.

Carter Code, sec. 214; Charlton Code, sec. 214.

Code Civ. Proced. Mont. (2221). | 407). Yellowstone Park R. Co. *v.*
Mont. R. Co. *v.* Freezer (74 Pac. Rep., | Bridger Coal Co. (87 Pac. Rep., 963).

Date with respect to which compensation shall be assessed, and measure of damages.

SEC. 644. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected. If an order be made letting the plaintiff into possession, as provided in section six hundred and fifty-one, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

Carter Code, sec. 215; Charlton Code, sec. 215.
Code Civ. Proced. Mont. (2222).

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Report of commissioners.

SEC. 645. Within thirty days after giving their appraisement and the assessment of damages, the commissioners must file a report of their proceedings, accompanied by a map, if a right of way be sought, showing the route, location, and termini thereof, in the office of the clerk of the court, and the clerk must notify the parties interested that such report has been filed, which notice must be served upon all the parties interested in the same manner as a summons.

Carter Code, sec. 216; Charlton Code, sec. 216.
Code Civ. Proced. Mont. (2223).

Appeal.

SEC. 646. An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of the commissioners is filed by any party interested. Such appeal must be taken within the period of thirty days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the plaintiff or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions; and unless a jury shall be waived by the consent of all parties to such appeal the same shall be tried by jury, and the damages to which appellant may be entitled by reason of the appropriation of his property shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners. Upon any verdict or assessment by commissioners becoming final judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interest and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement and to take, use, and appropriate the property described in such verdict or assessment for the use and purposes for which the land has been condemned shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns forever. In case the party appealing from the award of commissioners in any proceeding as aforesaid shall not succeed in increasing the amount of damages finally awarded to him in such proceeding he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant: *Provided*, Upon the trial of such appeal the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in the appeal, which was located after the preliminary survey of any such railroad seeking to condemn its right of way under and pursuant to the provisions of this act: *Provided*, Such condemnation proceedings are begun within one year after such preliminary survey.

Carter Code, sec. 217; Charlton Code, sec. 217.
Code Civ. Proced. Mont. (2224). | Rep., 631).
Spratt *v.* Helena Pr. Tr. Co. (94 Pac.

New proceedings to cure defective title.

SEC. 647. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

Carter Code, sec. 218; Charlton Code, sec. 218.
Code Civ. Proced. Mont. (2225).

Payment of damages.

SEC. 648. The plaintiff must within thirty days after final judgment pay the sum of money assessed, but may at the time of or before the payment elect to build the fences and cattle guards; and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court in double the assessed cost of the same to build such fences and cattle guards within eight months from the time the railroad is built on the land taken; and if such bond be given,

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need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Carter Code, sec. 219; Charlton Code, sec. 219.
Code Civ. Proced. Mont. (2226).

To whom paid.

SEC. 649. The payment may be made to the defendants entitled thereto or the money may be deposited in court for the defendants and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money can not be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Carter Code, sec. 220; Charlton Code, sec. 220.
Code Civ. Proced. Mont. (2227). | Forbis *v.* Cannon (90 Pac. Rep., 161).

Final order of condemnation.

SEC. 650. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of condemnation. A copy of the order must be filed in the office of the commissioner of the recording district wherein the land is located, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Carter Code, sec. 221; Charleton Code, sec. 221.
Code Civ. Proced. Mont. (2228).

Putting plaintiff in possession.

SEC. 651. At any time after the report and assessment of damages of the commissioners has been made and filed in the court, and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiffs, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation; and that all actions and proceedings against the plaintiff on account thereof be stayed until such time: *Provided, however*, Where an

Bond.

appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount of damages assessed, to give a bond or undertaking, with sufficient sureties, to be approved by the judge, and to be in such sum as the court or judge may direct, conditioned to pay defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses. The amount assessed as damages by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed or by giving security, as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff

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deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or concluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute such appeal from such assessment: *Provided*, If the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action: *And provided further*, Upon any appeal from the assessment of damages by the commissioners or a jury, the jury may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners.

Liability for excess over amount finally assessed, etc.

Appeal, etc.

Carter Code, sec. 222; Charlton Code, sec. 222.
Code Civ. Proced. Mont. (2229). Spratt *v.* Helena Pr. Tr. Co. (94 Pac. Rep., 631).

SEC. 652. Costs may be allowed, or, if not so allowed, may be so apportioned between the parties on the same or adverse sides, in the discretion of the court.

Payment of costs.

Carter Code, sec. 223; Charlton Code, sec. 223.
Code Civ. Proced. Mont. (2230).

SEC. 653. Except as otherwise provided in this chapter, the provisions of Title XIII of this act are applicable to and constitute the rules of practice of the proceedings mentioned in this act.

Rules of practice.

Carter Code, sec. 224; Charlton Code, sec. 224.
Code Civ. Proced. Mont. (2231). Yellowstone Park Co. *v.* Bridger Coal Co. (87 Pac. Rep., 963). Spratt *v.* Helena Pr. Tr. Co. (94 Pac. Rep., 631).

## CHAPTER TWENTY-THREE.

### OF FOREIGN CORPORATIONS.


Sec.
654. To file copy of charter and appoint agent.
655. Consent of agent, etc.
656. Death or removal of agent.
657. Penalty for failure to comply.
658. Annual reports to be filed.
659. Existing corporations to comply.
660. Penalty for failure to comply.


SEC. 654. All corporations or joint stock companies organized under the laws of the United States, or the laws of any State or Territory of the United States, shall, before doing business within the District, file in the office of the secretary of the District and in the office of the clerk of the district court for the division wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing—

June 6, 1900.
31 Stat. L., 528–529.
R. S., 2d Supp., 1404.
To file copy of charter and appoint agent.

(1) The name of such corporation and the location of its principal office or place of business without the District; and, if it is to have any place of business or principal office within the District, the location thereof;

(2) The amount of capital stock;

(3) The amount of its capital stock actually paid in in money;

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(4) The amount of its capital stock paid in in any other way, and in what;

(5) The amount of the assets of the corporation, and of what the assets consist, with the actual cash value thereof;

(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.

Carter Code, sec. 225; Charlton Code, sec. 225.

American Gold Min. Co. *v.* Giant Powder Co. (1 Alaska Rep., 667). Ames *v.* Kruzner (1 Alaska Rep., 598, 601, 603). First National Bank *v.* Fish (2 Alaska Rep., 347). Miocene Ditch Co. *v.* Lyng (2 Alaska Rep., 267). Comm. Bk. *v.* Sherman (43 Pac. Rep., 658). Gilbert *v.* New Zealand Ins. Co. (39 Fed. Rep., 884). New Eng. M. & S. Co. *v.* Vader (28 Fed. Rep., 267). Pac. Bldg. Co. *v.* Hill (67 Pac. Rep., 103). Siegel Campion Live Stock Co. *v.* Haston (75 Pac. Rep., 1028). Bayer *v.* N. P. R. Co. (66 Pac. Rep., 826). Descamp *v.* Warren Mtg. Co. (70 Pac. Rep., 581). Ryan Life S. & F. Co. *v.* Kelly (81 Pac. Rep., 470).

Consent of agent, etc.

SEC. 655. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

Carter Code, sec. 226; Charlton Code, sec. 226.

Death or removal of agent.

SEC. 656. In case of the death, removal from the District, or disqualification of the person so designated, or of the revocation of his consent, it shall be the duty of the clerk of the district court to notify such corporation or company; and it shall be the duty of such corporation or company, within sixty days thereafter, to designate another person in the manner hereinbefore provided.

Carter Code, sec. 227; Charlton Code, sec. 227.

Penalty for failure to comply.

SEC. 657. If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the District to sue for and recover, in the name of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the Treasury of the United States.

Carter Code, sec. 228; Charlton Code, sec. 228.
Burr *v.* House (3 Alaska Rep., 650).

Annual reports to be filed.

SEC. 658. Every such corporation or company shall annually, and within thirty days from the first day of July of each year, make a

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report, which shall be in the same form and contain the same information as required in the statement mentioned in section six hundred and fifty-four of this chapter, which report shall be filed in the office of the secretary of the district, and a duplicate thereof in the office of the clerk of the district court for the division wherein the business of the corporation is carried on.

Carter Code, sec. 229; Charlton Code, sec. 229.

Existing corporations to comply.

SEC. 659. Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the District, may, within ninety days from the time this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable.

Carter Code, sec. 230; Charlton Code, sec. 230.

Penalty for failure to comply.

SEC. 660. If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the District shall be void as to the corporation or company, and no court of the District, or of the United States, shall enforce the same in favor of the corporation or company so failing.

Carter Code, sec. 231; Charlton Code, sec. 231.
Burr *v.* House (3 Alaska Rep., 649, 650).

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## CHAPTER TWENTY-FOUR.

### OF THE INCORPORATION OF CEMETERIES.


Sec.
661. Cemetery association may be formed.
662. How formed.
663. Succession of trustees.
664. Association may prescribe terms of membership, etc.
665. General powers and management of such associations.
666. May sell unsuitable lands.
667. Burial lots exempt from execution and taxation.
668. Association may have plat recorded.


June 6, 1900.
31 Stat. L., 529-530.
R. S., 2d Supp., p. 1405.
Cemetery association may be formed.

SEC. 661. It shall be lawful for any number of persons, not less than five, who are residents of the precinct in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society.

Carter Code, sec. 233; Charlton Code, sec. 233.

How formed.

SEC. 662. The clerk to be elected, as provided in section six hundred and sixty-one, shall forthwith make out a true record of the proceedings of the meetings provided for by the preceding section, certify to and file a copy of the same with the commissioner of the precinct in with such meeting shall be held, and another copy of the same in the office of the clerk of the district court, together with the name by which such association desires to be known, and from and after filing such record the trustees and their associated members and successors shall be invested with the powers, privileges, and immunities incident to aggregate corporations.

Carter Code, sec. 233; Charlton Code, sec. 233.
NOTE.—Reference to sec. 661 erroneous; must be sec. 664.

Succession of trustees.

SEC. 663. The trustees who may be elected under the provisions of section six hundred and sixty-one shall have perpetual succession, and

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shall be capable in law of contracting and of prosecuting and defending actions.

Carter Code, sec. 234; Charlton Code, sec. 234.

Association may prescribe terms of membership, etc.

SEC. 664. All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees and officers, and the time and manner of their election or appointment and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association.

Carter Code, sec. 235; Charlton Code, sec. 235.

General powers and management of such associations.

SEC. 665. Such association shall be authorized to purchase, or to take by gift or devise, and hold, land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery, not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes and in no wise with a view to the profit of the members of such association. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations, and other sources of revenue shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof deem proper. The interest or income arising from the irreducible fund provided for in any by-law, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the cemetery, and, where any by-law has been enacted for the creation of an irreducible fund as herein provided for, it can not thereafter be amended in any manner whatsoever except for the purpose of increasing such fund. After paying for the land, all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents, or otherwise, shall be applied exclusively to laying out, preserving, protecting, and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts, except for originally purchasing, laying out, and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes, and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots.

Carter Code, sec. 236; Charlton Code, sec. 236.

May sell unsuitable lands.

SEC. 666. It shall be lawful for said trustees whenever in their opinion any portion or portions of their lands are unsuitable for burial purposes to sell such portion or portions and apply the avails thereof to the general purposes of such association.

Carter Code, sec. 237; Charlton Code, sec. 237.

Burial lots exempt from execution and taxation.

SEC. 667. Burial lots sold by such association shall be for the sole purpose of interment and shall be exempt from taxation, execution, attachment, or any other claims, lien, or process whatsoever if used as intended, exclusively for burial purposes and in nowise with a view to profit.

Carter Code, sec. 238; Charlton Code, sec. 238.

Association may have plat recorded.

SEC. 668. All such associations shall cause a plan of their grounds and of the lots by them laid out to be made and recorded in a book

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kept for that purpose by the clerk of such association, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve, and adorn the grounds and avenues, to erect buildings for the use of the association, and to prescribe rules for the designation and adornment of lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement, or adornment of a lot which they may deem improper. An annual statement of the financial affairs of such association shall be made by the clerk thereof.

Carter Code, sec. 239; Charlton Code, sec. 239.

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## CHAPTER TWENTY-FIVE.

### OF CONTAGIOUS DISEASE AMONG ANIMALS.


Sec.
669. Penalty for bringing diseased animals into said district.
670. Diseased animals to be kept away from others.
671. Procedure against persons violating this code.
672. Proceedings in case of violation of this law.
673. Certain words defined.
674. Officers must prosecute.
675. Jurisdiction.


June 6, 1900. 31 Stat. L., 531–532. R. S., 2d Supp., 1407.

Penalty for bringing diseased animals into said district.

SEC. 669. Any person, persons, company, or corporation who shall bring, or cause to be brought, or aid in bringing, into the district any sheep, hog, horse, or cattle of any kind, or any domestic animal of any kind, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor, and on conviction be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

Carter Code, sec. 240; Charlton Code, sec. 240.

Diseased animals to be kept away from others.

SEC. 670. If any person or persons, company, or corporation owning or having possession or control of any animal affected by any such contagious or infectious disease shall fail to keep the same within an inclosure, or herd the same in some place where it will be secure from contact with other animals not so affected, or shall suffer such infected animal to range where it will be likely to come in contact with another animal not so affected, shall be guilty of a misdemeanor, and, on conviction, punished by a fine of not more than one thousand dollars for each offense.

Carter Code, sec 241; Charlton Code, sec. 241.

Procedure against persons violating this code.

SEC. 671. Any person, company, or corporation violating any of the provisions of this chapter shall be liable for all damages sustained by any other person, company, or corporation through such violation.

Carter Code, sec. 242; Charlton Code, sec. 242.

Proceedings in case of violation of this law.

SEC. 672. Any person or persons found violating the provisions of this chapter may be arrested and held without warrant in the same manner as in cases of persons found breaking the peace; and the person or persons making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owner or owners of the animal or animals found in the charge of the person or persons arrested, and shall properly care and provide for such animal or animals until the owner or owners of such animal or animals, or a duly authorized agent of the same, shall take charge of the same: *Provided*, Such owner or owners or agent shall claim and take charge of the same within sixty days of the date of the notice; and the per-

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son or persons making such arrest shall have a lien upon such animal or animals for the expense of such care and provisions.

Carter Code, sec. 243; Charlton Code, sec. 243.

Certain words defined.

SEC. 673. In this chapter the word "animal" or "animals" shall be held to include all brute creatures, and the words "owner," "owners," "person," "persons," and "whoever" shall be held to include corporations as well as individuals, and the knowledge and acts of agents of and persons employed by corporations in regard to the treatment of animals transported, owned, or employed by or in the custody of such corporation or corporations shall be held to be acts and knowledge of such corporation or corporations.

Carter Code, sec. 244; Charlton Code, sec. 244.

Officers must prosecute.

SEC. 674. It shall be the duty of any marshal or deputy marshal to arrest any violator or violators of the provisions of this chapter, and to prosecute any violator or violators of its provisions which shall come to his knowledge or notice; and all fines and forfeitures which shall be collected for violations of any of the provisions hereof shall be paid into the office of the clerk of the district court, and such clerk shall turn the same, according to law, into the Treasury of the United States.

Carter Code, sec. 245; Charlton Code, sec. 245.

Jurisdiction.

SEC. 675. Commissioners within their respective precincts shall have jurisdiction over all offenses committed under the provisions of this chapter.

Carter Code, sec. 246; Charlton Code, 246.

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## CHAPTER TWENTY-SIX.

### OF ESTRAYS.


Sec.
676. Commissioners to keep record of estrays.
677. Householder may take up estray and post notices thereof.
678. Owner to recover estray on proof and payment of costs.
679. Statement of taking up, etc.
680. When description of estray to be published in newspaper.
681. Claim of owner after appraisal.
682. Sale of estray if not proven within six months.
683. Penalty for violating above provisions.


June 6, 1900.
31 Stat. L., 532–533.
R. S., 2d Supp., 1408.

SEC. 676. It shall be the duty of the commissioner of each precinct in the district to keep a book of suitable dimensions to be called the record of estrays.

Commissioners to keep record of estrays.

Carter Code, sec. 247; Charlton Code, sec. 247.

Householder may take up estray and post notices thereof.

SEC. 677. Any householder about whose premises any estray may be running at large may take up the same and shall immediately post notices in three public places in the district, one of which shall be in the precinct in which the estray was taken up, giving as correct a description as may be of natural and artificial marks, probable age, size, and so forth.

Carter Code, sec. 248; Charlton Code, sec. 248.

Shepard *v.* Hawley (4 Or. Rep., 206).
Stewart *v.* Hunter (16 Pac. Rep., 876).
Maxwell *v.* Territory (85 Pac. Rep., 116).
Frank *v.* Symons (88 Pac. Rep., 561).

Owner to recover estray on proof and payment of costs.

SEC. 678. If, previous to the expiration of ten days from taking up, the owner shall prove the estray to be his, he shall be entitled to the same by paying charges, which shall be one dollar for taking up, post-

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ing, and so forth, and a reasonable rate for keeping the same. And if the owner shall further prove that the person so posting an estray knew to whom such estray belonged and yet did not notify the owner of his intention to post the estray, the person so taking and posting shall not recover for either posting or keeping.

Carter Code, sec. 249; Charlton Code, sec. 249.

Statement of taking up, etc.

SEC. 679. If at the expiration of ten days no one shall have made his claims known to the taker-up, it shall be his duty to make a statement to the nearest commissioner of the precinct in which such estray is taken up, under oath, of the taking up of such estray, post, and so forth, according to law; whereupon the commissioner shall appraise the estray and immediately make record of the same in the record of estrays. And such commissioner shall receive for each appraisal one dollar.

Carter Code, sec. 250; Charlton Code, sec. 250.

When description of estray to be published in newspaper.

SEC. 680. If the amount of such appraisement shall exceed fifteen dollars the person taking up such estray shall be further required to cause to be published, in a newspaper published in the precinct, or, if there be none, then in a newspaper of general circulation in the district, a description of the same, giving marks as above specified, the name and residence of the finder, and, as near as may be, the time at which the estray was taken up.

Carter Code, sec. 251; Charlton Code, sec. 251.

Claim of owner after appraisal.

SEC. 681. If the owner, or any person entitled to the possession of an estray, shall appear and make out his title thereto and pay the charges thereon within six months from the time the notice is filed with the commissioner, as provided in section six hundred seventy-nine, and make out his right thereto, he shall have such estray restored to him upon paying all lawful charges which have been incurred in relation to the same.

Carter Code, sec. 252; Charlton Code, sec. 252.

Sale of estray if not proven within six months.

SEC. 682. If the person entitled to the possession of any estray shall not appear and make out his title thereto within six months from the time of entry thereof by the commissioner, such estray shall be sold, at the request of the finder, by the marshal or any deputy marshal of the District, at public auction, upon first giving public notice thereof in writing by posting up the same in three public places in the precinct, one of which shall be at or adjoining the post office, at least ten days before such sale, and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, and the fees of the marshal or deputy marshal, which shall be the same as upon a sale on an execution, the remaining proceeds of such sale shall be deposited with the clerk of the district court; and if the owner of the property sold, or his legal representatives, shall not, within one year after the money shall have been so deposited with the clerk of the district court, furnish satisfactory evidence to the district judge of the ownership of such property the amount so deposited with the clerk of the district court shall be paid into the Treasury of the United States.

Carter Code, sec. 253; Charlton Code, sec. 253.

Penalty for violating above provisions.

SEC. 683. If any person shall take up, keep, or use any estray without complying with the provisions of this code he shall be liable to a penalty of double the value of such estray, to be sued for and recovered in the district court at the suit of the United States; and it is hereby made the duty of the district attorney to prosecute an action

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against such offender for the violation of the provisions of this code when the same shall be within his personal knowledge or when complaint in writing, under oath, be filed with him alleging the violation of this code.

Carter Code, sec. 254; Charlton Code, sec. 254.

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# CHAPTER TWENTY-SEVEN.

## OF INTEREST AND USURY.


Sec.
684. Legal rate of interest.
685. Illegal interest not to be taken.
686. May recover usurious interest paid.
687. Illegal interest, contract for.
688. Assignee of usurious contract may recover amount paid for same.
689. Mortgagor and mortgagee may agree which shall pay taxes, when.
690. Assessment, how made in such cases.


June 6, 1900.
31 Stat. L., 533–534.
R. S., 2d Supp., p. 1409.
Legal rate of interest.

SEC. 684. The rate of interest in the District shall be eight per centum per annum, and no more, on all moneys after the same become due; on judgments and decrees for the payment of money; on money received to the use of another and retained beyond a reasonable time without the owner's consent, expressed or implied, or on money due upon the settlement of matured accounts from the day the balance is ascertained; on money due or to become due where there is a contract to pay interest and no rate specified. But on contracts interest at the rate of twelve per centum may be charged by express agreement of the parties, and no more.

Carter Code, sec. 255; Charlton Code, sec. 255.

Raymond *v.* Hemple (2 Alaska Rep., 343). Peterson *v.* Berry (125 Fed. Rep., 902; 60 C. C. A., 610). Lorentzen *v.* Warner (3 Alaska Rep., 220). Werner *v.* Lorentzen (3 Alaska Rep., 277, 278, 279). Hemple *v.* Raymond (144 Fed. Rep., 797; 5197, 5198, R. S.). In re Pittock (2 Saw. Rep., 416). Bremer *v.* Fleckenstein (9 Or. Rep., 266). Osborn *v.* Nat. Bank (22 U. S. Rep., 738). Chappelle *v.* Olney (1 Saw. Rep., 102). Dowell *v.* Griswold (5 Saw. Rep., 23). Catlin *v.* Knott (2 Or. Rep., 321). Pengra *v.* Wheeler (34 Pac. Rep., 354). Hawley *v.* Dawson (18 Pac. Rep., 592). Smith *v.* Turner (54 Pac. Rep., 166). Willamette Falls Co. *v.* Riley (1 Or. Rep., 183). Young *v.* State (60 Pac. Rep., 711; 47 L. R. A., 548). Monteith *v.* Parker (59 Pac. Rep., 192). Seton *v.* Hoyt (55 Pac. Rep., 967; 43 L. R. A., 634). Shipley *v.* Hacheney (55 Pac. Rep., 971). Brauer *v.* Portland (60 Pac. Rep., 379). Western Sav. Co. *v.* Houston (65 Pac. Rep., 611). Wash. Inv. Assn. *v.* Stanley (63 Pac. Rep., 489). State *v.* Multonomah County (10 Pac. Rep., 635). New Eng. M. & S. Co. *v.* Vader (28 Fed. Rep., 271). Neal *v.* Foster (36 Fed. Rep., 38). Hawkins *v.* Cit. Inv. Co. (64 Pac. Rep., 320). Hubert *v.* Wash. Nat. B. L. & I. Assn. (71 Pac. Rep., 64). Graham *v.* Merchant (72 Pac. Rep., 1088). Poppleton *v.* Jones (69 Pac. Rep., 919). Baker *v.* Williams & England Bkg. Co. (70 Pac. Rep., 711). Colse *v.* Riddle (67 Pac. Rep., 932). Thompson *v.* Hibbs (76 Pac. Rep., 778). Ferguson *v.* Reiger (73 Pac. Rep., 43). Sorenson *v.* Or. Pr. Co. (82 Pac. Rep., 10). Savage *v.* Salem Mills Co. (85 Pac. Rep., 69). Baker Cty. *v.* Huntington (89 Pac. Rep., 144). Anderson *v.* Griffith (93 Pac. Rep., 934). Raski *v.* Wise (107 Pac. Rep., 984).

Illegal interest not to be taken.

SEC. 685. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum or value for the loan or use of money, or upon contract founded upon any bargain, sale, or loan of wares, merchandise, goods, chattels, lands, and tenements, than in this chapter prescribed.

Carter Code, sec. 256; Charlton Code, sec. 256.
Lorentzen *v.* Warner (3 Alaska Rep., 220).

May recover usurious interest paid.

SEC. 686. If usurious interest, as defined by the preceding sections, shall hereafter be received or collected the person or persons paying the same, or their legal representatives, may, by action brought in

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any court of competent jurisdiction, within two years after such payment, recover from the person, firm, or corporation receiving the same double the amount of the interest so received or collected.

Carter Code, sec. 257; Charlton Code, sec. 257.

Fish *v.* Hemple (2 Alaska Rep., 175). Raymond *v.* Hemple (2 Alaska Rep., 344).

Lorentzen *v.* Warner (3 Alaska Rep., 219–220): Defendants borrowed money from the plaintiff and gave her their principal note, due in one year, and 12 interest notes, payable monthly. Defendants paid seven of the interest notes. They failed to pay the other interest notes or the principal note when due, and suit was brought to recover on the notes. Defendants pleaded the payment of the usurious interest notes, and sought to set off and recover double the amount thereof as a counterclaim. Held, that the cause of action for the recovery of double the usurious interest paid did not arise out of the original contract or transaction, but was a new and separate cause of action created by the statute; that usurious interest payments could not be set off against the original debt, but must be recovered in a separate action under penal section 686 of the Civil Code of Alaska.

Werner *v.* Lorentzen (3 Alaska Rep., 275, 277, 279): The lender is not liable to an action for the recovery of the usury penalty prescribed by section 686 of the Civil Code of Alaska, so long as the principal debt, with legal interest thereon, after deducting all payments, is unpaid. Until these facts are affirmatively alleged in the complaint, demurrer lies.

Hemple *v.* Raymond (144 Fed. Rep., 797). Washington-Alaska Bank *v.* Stewart et al. (184 Fed. Rep., 673).

Illegal interest, contract for.

SEC. 687. If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money, property, or other valuable thing, or that any gift or donation of money, property, or other valuable thing has been made or promised to be made to a lender or creditor, or to any person for him, directly or indirectly, either by the borrower or debtor, or any person for him, the design of which is to obtain for money so loaned, or for debts due or to become due, a rate of interest greater than that specified by the provisions of this chapter, the same shall be deemed to be usurious and shall work a forfeiture of the entire interest on the debt. The court before which such action is prosecuted shall render judgment for the amount due, without interest, on the sum loaned or the debt contracted, against the defendant and in favor of the plaintiff and against the plaintiff for costs of action, whether such action be contested or not.

Carter Code, sec. 258; Charlton Code, sec. 258.

Balfour *v.* Davis (12 Pac. Rep., 89). Wash. Inv. Assn. *v.* Stanley (63 Pac. Rep., 489). Western Sav. Co. *v.* Houston (65 Pac. Rep., 611). Law Trust Soc. *v.* Hogue (62 Pac. Rep., 380). Nunn *v.* Bird (59 Pac. Rep., 808). Barger *v.* Taylor (46 Pac. Rep., 615; 47 Pac. Rep., 618). Chapman *v.* State (5 Or., 432). Poppleton *v.* Nelson (7 Pac. Rep., 492). New Eng. M. & S. Co. *v.* Vader (27 Fed. Rep., 272; 28 Fed. Rep., 271). In re Pittock (2 Saw., 416). Hathaway *v.* Meads (4 Pac. Rep., 519). Wilson S. & M. Co. *v.* Moreno (6 Saw., 35). Burns *v.* Scoggin (9 Saw., 73). Peyser *v.* Cole (4 Pac. Rep., 520). Sujette *v.* Wilson (11 Pac. Rep., 267. Holladay *v.* Holladay (11 Pac. Rep., 260; 12 Pac. Rep., 821). Egan *v.* N. A. Sav. L. & B. Co. (76 Pac. Rep., 774). Hubert *v.* Wash. Nat. B. I. & I. Co. (71 Pac. Rep., 64). Hemple *v.* Raymond (144 Fed. Rep., 797).

Assignee of usurious contract may recover amount paid for same.

SEC. 688. Nothing in this code shall be construed to prevent the proper bona fide assignee of any usurious contract recovering against his immediate assignor, or the original usurer, the full amount paid by him for such contract, but the same may be recovered by proper action in any court having competent jurisdiction: *Provided*, Such assignee had no notice of the usury affecting the contract.

Carter Code, sec. 259; Charlton Code, sec. 259.

Mortgagor and mortgagee may agree which shall pay taxes, when.

SEC. 689. All contracts made and entered into in the district by and between borrower and lender, debtor, and creditor, or mortgagor and mortgagee, on which the rate of interest is eight per centum or under, whereby one party shall agree to pay the taxes on the debt, credit, or



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mortgage existing or entered into between such parties, be, and the same are hereby, declared legal and valid and shall not be deemed or taken to be usurious.

Carter Code, sec. 260; Charlton Code, sec. 260.

New Eng. M. & S. Co. *v.* Vader (28 Fed. Rep., 274). U. S. Mtg. & Tr. Co. *v.* Marquam (69 Pac. Rep., 37).

NOTE.—See sec. 1221, ch. 42, Code Civ. Proced.

Assessment, how made in such cases.

SEC. 690. All contracts entered into under section six hundred and eighty-nine may be enforced by the parties thereto in the courts of the district: *Provided*, In making the assesments of credits, loans, or mortgages the same shall be assessed to the holder thereof.

Carter Code, sec. 261; Charlton Code, sec. 261.

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# CHAPTER TWENTY-EIGHT.

## OF THE LIENS OF MECHANICS, LABORERS, AND OTHERS.


Sec.
691. Lien, to whom given.
692. Lien extends to the land.
693. Priority between liens and mortgages.
694. Owner of land charged as owner of building, when.
695. Claim of lien must be filed.
696. Commissioner must record liens.
697. Foreclosure must be commenced in six months.
698. Lien for grading street, etc.
699. Suits to enforce liens must be before commissioner.
700. Payment by owner of building does not prevent lien, when.
701. Amount of recovery not to exceed amount due on contract; exception.
702. Building materials, when not subject to attachment.
703. Definitions.
704. Existing liens and proceedings thereunder not impaired.


June 6, 1900.

31 Stat. L., 534–537.

R. S., 2d Supp., p 1410.

Lien, to whom given.

Sec. 691. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other persons performing labor upon or furnishing materal, of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, shall have a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of this code.

Carter Code, sec. 262; Charlton Code sec. 262.

In Morris *v.* Marsh (3 Alaska Rep., 146), held: That in accordance with secs. 691, 692, and 694 a complaint in foreclosure of a laborer's lien on a mining claim must affirmatively show that the labor went to the improvement of the mine, or it is fatally defective on demurrer.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 609). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424). Wimbish *v.* Cascaden (3 Alaska Rep., 150). Burr *v.* House (3 Alaska Rep., 641). Copper River Lumber Co. *v.* Clark (3 Alaska Rep., 635). Cascaden *v.* Wimbish (161 Fed. Rep., 241; 88 C. C. A., 277). Brown *v.* Harper (4 Or. Rep., 89). Hughes *v.* Lansing (55 Pac. Rep., 95). Fisher *v.* Tomlinson (66 Pac. Rep., 696). Forbes *v.* Willamette Falls El. Co. (23 Pac. Rep., 670). Willamette Falls T. & M. Co. *v.* Riley (1 Or. Rep., 183). Fitch *v.* Howitt (52 Pac. Rep., 192). Pilz *v.* Killingsworth (26 Pac. Rep., 305). Allen *v.* Rowe (23 Pac. Rep., 901). Curtis *v.* Sestanovich (37 Pac. Rep., 67). Gordon *v.* Deal (31 Pac. Rep., 287). Nicolai *v.* Van Fridagh (31 Pac. Rep., 288). Matthiesen *v.* Arata (50 Pac. Rep., 1015). Selwood Lbr. Co. *v.* Monnell (38 Pac. Rep., 66). Justice *v.* Elwood (43 Pac. Rep., 649). Willamette Falls D. & M. Co. *v.* Smith (1 Or. Rep., 171). Hand Mfg. Co. *v.* Marks (59 Pac. Rep., 549). Ainslee *v.* Kohn (19 Pac. Rep., 97).

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Giant Powder Co. *v.* Or. Pac. R. Co. (42 Fed. Rep., 470). Watson *v.* Noon Day Mining Co. (60 Pac. Rep., 994). Harrisburg Lbr. Co. *v.* Washburn (44 Pac. Rep., 390). Bank of Idaho *v.* Malheur County (45 Pac. Rep., 781; 35 L. R. A., 142). Portland Lbr. Co. *v.* School Dist. (10 Pac. Rep., 350). Patterson *v.* Gallagher (35 Pac. Rep., 454). Honeyman *v.* Thomas (36 Pac. Rep., 636). Dallas Lbr. Co. *v.* Woolen Mfg. Co. (3 Or. Rep., 527). Kezarthe *v.* Marks (16 Pac. Rep., 407). Williams *v.* Toledo Coal Co. (36 Pac. Rep., 159). Allen *v.* Elwert (44 Pac. Rep., 824). Cochran *v.* Baker (56 Pac. Rep., 641). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Getty *v.* Ames (48 Pac. Rep., 355). Willamette Mill Co. *v.* Shea (32 Pac. Rep., 759). Willamette Falls T. & M. Co. *v.* Remick (1 Or. Rep., 169). Beech *v.* Stamper (74 Pac. Rep., 208). Smith *v.* Wilcox (74 Pac. Rep., 708). Cline *v.* Schell (73 Pac. Rep., 12). Lewis *v.* Beeman (80 Pac. Rep., 417). Gray *v.* Jones (81 Pac. Rep., 813). Quackenbush *v.* Astoria Land Co. (83 Pac. Rep., 787). Rowen *v.* Allado (93 Pac. Rep., 929). Litherland *v.* S. Merton Cohn R. E. & T. Co. (100 Pac. Rep., p. 1); Darkheimer *v.* Copperopolas Copper Co. (104 Pac. Rep., p. 895). Pioneer Mining Co. *v.* Delamotte et al. (185 Fed. Rep., 752). Andrews *v.* Ladd (188 Fed. Rep., 313).

NOTE.—See for construction of statute of mechanic's lien note on construction of statutes, Title XII.

Lien extends to the land.

SEC. 692. The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof (to be determined by the judgment of the court at the time of the foreclosure of such lien), and the mine on which the labor was performed or for which the material was furnished shall also be subject to the liens created by this code if, at the time the work was commenced or the materials for the same had been commenced to be furnished, the land belonged to the person who caused the building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein shall be subject to such lien; and in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his rights thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this code, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and costs due under the lease, unless the lessor shall have regained possession of the land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereof; in which event the purchaser shall have the right only to remove the building or other improvement within thirty days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

Carter Code, sec. 263; Charlton Code, sec. 263.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 609). Morris *v.* Marsh (3 Alaska Rep., 143). Copper River Lumber Co. *v.* Clark (3 Alaska Rep., 637).

In this case secs. 692 and 693 are construed as follows: The lienor furnished lumber to construct an additional building adjoining another building, upon which and upon the ground occupied by both buildings there was a prior recorded valid mortgage. Held, that the lien was valid upon the additional building, which could be severed and removed without injury to the mortgaged property.

Cascaden *v.* Wimbish (161 Fed. Rep., 241; 88 C. C. A., 277).

Priority between liens and mortgages.

SEC. 693. A lien created by this code upon any parcel of land shall be preferred to any lien, mortgage, or other incumbrance which may have attached to the land subsequent to the time when the building or other improvement was commenced, or the materials were commenced to be furnished and placed upon or adjacent to the land; also to any lien, mortgage, or other incumbrance which was unrecorded at the time when the building, structure, or other improvement was com-

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menced, or other materials for the same were commenced to be furnished and placed upon or adjacent to the land; and all liens created by this code upon any building or other improvements shall be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which the building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien, such building or other improvement may be sold separately from the land, and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed thirty days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal: *Provided*, If such removal be prevented by legal proceedings, the thirty days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal be taken.

Carter Code, sec. 264; Charlton Code, sec. 264.

Copper River Lumber Co. *v.* Clark (3 Alaska Rep., 637, 638, 639). Harrisburg Lbr. Co. *v.* Washburn (44 Pac. Rep., 390). Inman *v.* Henderson (45 Pac. Rep., 300). Cooper Mfg. Co. *v.* Delahunt (60 Pac. Rep., 1). Smith *v.* Wilkins (64 Pac. Rep., 760). Capital Lbr. Co. *v.* Ryan (54 Pac. Rep., 1093). Title Guar. Co. *v* Wrenn (56 Pac. Rep., 271). Henry *v.* Hand (59 Pac. Rep., 330). Curtis *v.* Sestanovich (37 Pac. Rep., 67).

NOTE.—As to unrecorded conveyances when void as to third persons, see sec. 524, ch. 11, ante.

Owner of land charged as owner of building, when.

SEC. 694. Every building or other improvement mentioned in section six hundred and ninety-one, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this code, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon the land, or upon the building or other improvement situated thereon.

Carter Code, sec 265; Charlton Code, sec. 265.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 609–611). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424). Morris *v.* Marsh (3 Alaska Rep., 145). Wimbish *v.* Cascaden (3 Alaska Rep., 150). Cascaden *v.* Wimbish (161 Fed. Rep., 241). Henry *v.* Hand (59 Pac. Rep., 330). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Nottingham *v.* McKendrick (63 Pac. Rep., 822). Cross *v.* Tscharnig (39 Pac. Rep., 540). Willamette Lbr. Co. *v.* McLeod (40 Pac. Rep., 93). Hunter *v.* Cordon (52 Pac. Rep., 182). Allen *v.* Rowe (23 Pac. Rep., 901). Patterson *v.* Gallagher (35 Pac. Rep., 454). Capital Lbr. Co. *v.* Ryan (54 Pac. Rep., 1093). Stimson *v.* Hardy (41 Pac. Rep., 116). Williams *v.* Toledo Coal Co. (36 Pac. Rep., 159). Marshall *v.* Cardwell (80 Pac. Rep., 652).

Claim of lien must be filed.

SEC. 695. It shall be the duty of every original contractor, within sixty days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, save the original contractor, claiming the benefit of this code, within thirty days after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien suf-

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ficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts.

Carter Code, sec. 266; Charlton Code, sec. 266.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 610). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424). Rankin *v.* Malarkey (32 Pac. Rep., 620; 34 Pac. Rep., 816). Pilz *v.* Killingsworth (26 Pac. Rep., 305). Kezertee *v.* Marks (16 Pac. Rep., 407). Nottingham *v.* McKendrick (63 Pac. Rep., 822). Allen *v.* Rowe (23 Pac. Rep., 901). Willamette Lbr. Co. *v.* McLeod (40 Pac. Rep., 93). Curtis *v.* Sestonavich (37 Pac. Rep., 67). Gordon *v.* Beal (31 Pac. Rep., 287). Dillon *v.* Hart (34 Pac. Rep., 817). Getty *v.* Ames (48 Pac. Rep., 355). Leick *v.* Beers (43 Pac. Rep., 658). Rowland *v.* Harmon (34 Pac. Rep., 357). Osborn *v.* Logus (42 Pac. Rep., 997). Cross *v.* Tscharnig (39 Pac. Rep., 540). Ainslee *v.* Kohn (19 Pac. Rep., 97). Allen *v.* Elwert (44 Pac. Rep., 824). Cooper Mfg. Co. *v.* Delahunt (60 Pac. Rep., 1). Fitch *v.* Howitt (52 Pac. Rep., 192). Harrisburg Lbr. Co. *v.* Washburn (44 Pac., 390). Chamberlin v. Hibbard (38 Pac. Rep., 437). Nicolai *v.* Van Fridagh (31 Pac. Rep., 288). Whittier, Fuller *v.* Blakesley (11 Pac. Rep., 305). Hendey *v.* Pac. Cable Co. (33 Pac. Rep., 403). Avery *v.* Butler (47 Pac. Rep., 706). Henry *v.* Hand (59 Pac. Rep., 330). Morehouse *v.* Collins (31 Pac. Rep., 295). Hobkirk *v.* Port. Nat. B. B. Club (76 Pac. Rep., 776). Barton *v.* Rose (85 Pac. Rep., 1008). Rowen *v.* Allado (93 Pac. Rep., 929). Caffey *v.* Smith (97 Pac. Rep., 1079).

Commissioner must record liens.

SEC. 696. The recorder shall record the claim in a book kept for that purpose, which records shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

Carter Code, sec. 267; Charlton Code, sec. 267.
NOTE.—See sec. 379, Political Code.

Foreclosure must be commenced in six months.

SEC. 697. No lien provided for in this code shall bind any building, structure, or other improvement for a longer period than six months after the same shall have been filed, unless suit be brought before the proper court within that time to enforce the same, or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit.

Carter Code, sec. 268; Charlton Code, sec. 268.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 610). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Capital Lbr. Co. *v.* Ryan (54 Pac. Rep., 1093).

Lien for grading street, etc.

SEC. 698. Any person who shall, at the request of the owner of any lot in the District, grade, fill in, or otherwise improve the same or the street in front of or adjoining the same, shall have a lien upon such lot for his work done and materials furnished in the grading, filling in, or otherwise improving the same; and all the provisions of this code respecting the securing and enforcing the mechanic's lien shall apply thereto.

Carter Code, sec. 269; Charlton Code, sec. 269.

Town of Nome *v.* Lang (1 Alaska Rep., 595). Pilz *v.* Killingsworth (26 Pac. Rep., 305).

District court to try suits to enforce liens.

SEC. 699. Actions to enforce the liens created by this code shall be brought before the district court, and the pleadings, process, practice, and other proceedings shall be the same as in other cases. In case the proceeds of any sale under this code shall be insufficient to pay all lien holders under it, the liens of all persons other than the original contractor (and subcontractors) shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the subcontractor shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid to the original contractor; and each claimant shall be entitled to execution for any balance due him after such distribution, such execution to be issued by the clerk of the district court,

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upon demand, after the return of the marshal or other officer making the sale showing such balance due.

In all actions under this chapter the district court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien, and also a reasonable amount as attorney's fees. All actions to enforce any lien created by this code shall have preference upon the calendar of civil actions brought before the district court and shall be tried without unnecessary delay.

In all actions to enforce any lien created by this chapter all persons personally liable and all lien holders whose claims have been filed for record under the provisions of section six hundred and ninety-five shall, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien may, be made parties; but such as are not made parties shall not be bound by such proceedings. The proceedings upon the foreclosure of the liens created by this code shall be, as nearly as possible, made to conform to the proceedings of a foreclosure of a mortgage lien upon real property.

Carter Code, sec. 270; Charlton Code, sec. 270.

Jorgensen Co. *v.* Sheldon (2 Alaska Rep., 610). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424). Cascaden *v.* Wimbish (161 Fed. Rep., 241; 88 C. C. A., 277). Hand Mfg. Co. *v.* Marks (52 Pac. Rep., 512; 53 Pac. Rep., 1072). Cooper Mfg. Co. *v.* Delahunt (51 Pac. Rep., 549). Osborn *v.* Logus (37 Pac. Rep., 456; 38 Pac. Rep., 190; 42 Pac. Rep., 997). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Forbes *v.* Willamette Falls El. Co. (23 Pac. Rep., 670). Willamette Falls T. & M. Co. *v.* Riley (1 Or. Rep., 183). Goodale *v.* Coffee (35 Pac. Rep., 990). Allen *v.* Elwert (44 Pac. Rep., 824). Smith *v.* Wilkins (64 Pac. Rep., 760). Pilz *v.* Killingsworth (26 Pac. Rep., 305). Capital Lbr. Co. *v.* Ryan (54 Pac. Rep., 1093).

Payment by owner of building does not prevent lien, when.

SEC. 700. No payment by the owner of the building or structure to any original contractor or subcontractor, made before thirty days from the completion of the building, shall be valid for the purpose of defeating or discharging any lien created by this chapter in favor of any workman, laborer, lumber merchant, or material man, unless such payment so made by the owner of the building or structure to such original contractor or subcontractor has been distributed among such workmen, laborers, lumber merchants, or material men, or, if distributed in part only, then the same shall be valid only to the extent the same has been so distributed.

Carter Code, sec. 271; Charlton Code, sec. 271.

Fitch *v.* Howitt (52 Pac. Rep., 192). Ainslee *v.* Kohn (19 Pac. Rep., 97). Curtis *v.* Sestonavitch (37 Pac. Rep., 67). Watson *v.* Noon Day Min. Co. (60 Pac. Rep., 994). Hughs *v.* Lansing (55 Pac. Rep., 95). Smith *v.* Wilcox (75 Pac. Rep., 710).

Amount of recovery not to exceed amount due on contract; exception.

SEC. 701. Any contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a lien shall be filed under this chapter for work done or materials furnished to any contractor he shall defend any action brought thereupon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the liens the owner shall be entitled to deduct from any amount due or about to become due by him to the contractor the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any

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amount so paid by him, the owner, in excess of the contract price, and for which the contractor was originally the party liable.

Carter Code, sec. 272; Charlton Code, sec. 272.
Cooper Mfg. Co. *v.* Delahunt (51 Pac. Rep., 649).

Building materials, when not subject to attachment.

SEC. 702. Whenever any mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials except a debt due for the purchase money thereof, so long as in good faith the same have been or are about to be applied to the construction, alteration, or repair of such building, structure, or other improvement.

Carter Code, sec. 273; Charlton Code, sec. 273.
NOTE.—See attachment, ch. 14, Code Civ. Proceed.

Definitions.

SEC. 703. The words "building or other improvement," wherever the same are used in this chapter, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," wherever the same are used herein, shall be held to include partial construction, and all repairs done in and upon any building or other improvement.

Carter Code, sec. 274; Charlton Code, sec. 274.

Existing liens and proceedings thereunder not impaired.

SEC. 704. Nothing contained in this chapter shall affect any lien heretofore acquired, but the same may be enforced by the provisions of this chapter; and where actions are now pending the proceedings, after this chapter goes into effect, may be conducted according to this chapter.

Carter Code, sec. 275; Charlton Code, sec. 275.

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# CHAPTER TWENTY-NINE.

## OF LIENS ON PERSONAL PROPERTY.


Sec.
705. Liens for labor on personal property.
706. Lien of carriers, storers of merchandise, and agisters of cattle.
707. Proceedings to enforce such liens.
708. Agreements not to be interfered with.
709. Lien for labor on logs.
710. Lien on lumber for labor performed thereon.
711. Lien for stumpage.
712. Preferred liens.
713. Limitation of lien for labor.
714. Limitation of lien for stumpage.
715. Filing claim and form thereof.
716. Filing claim for stumpage.
717. Record of claim.
718. Limitation for bringing action.
719. Jurisdiction.
720. Against what timber lien may be enforced.
721. Joinder of liens.
722. Judgment lien; execution.
723. Sale when property is subject to loss or destruction.
724. Preventing the identification of timber subject to lien.


June 6, 1900.
31 Stat. L., 537-541.
R. S., 2d Supp., p. 1414.
Liens for labor on personal property.

SEC. 705. Any person who shall make, alter, repair, or bestow labor on any article of personal property at the request of the owner or lawful possessor thereof shall have a lien upon such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the material he has furnished, and such person may hold and retain

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possession of the same until such just and reasonable charges shall be paid.

Carter Code, sec. 276; Charlton Code, sec. 276.
McDearmid *v.* Foster (12 Pac. Rep., 813).

Lien of carriers, storers of merchandise, and agisters of cattle.

SEC. 706. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, merchandise, and personal property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

Carter Code, sec. 277; Charlton Code, sec. 277.
Bailey *v.* Davis (23 Pac. Rep., 881). | Tobin *v.* Portland Flouring Mills Co. (68 Pac. Rep., 749).
Sharp *v.* Johnson (63 Pac. Rep., 485).

Proceedings to enforce such liens.

SEC. 707. If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in a newspaper published in the precinct, if there be such publication, or by posting up notice of such sale in three public places in the precinct, one of which shall be the post-office, or adjacent thereto, for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof: *Provided*, Nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due the warehouseman on such wool, wheat, oats, or other grain: *And provided further*, If any such warehouseman shall sell, loan, or dispose of in any manner, contrary to the provisions of this chapter, without the consent of the owner thereof, any such wool, wheat, oats, or other grain, he shall, for each and every offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain a sum equal to the market value thereof, and fifty per centum of the market value in addition as a penalty, the market value to be the price such article or articles bore at the time the owner therof made demand on the warehouseman for the same.

Carter Code, sec. 278; Charlton Code, sec. 278.

Agreements not to be interfered with.

SEC. 708. The provisions of the last three sections shall not interfere with any special agreement of the parties.

Carter Code, sec. 279; Charlton Code, sec. 279.

Lien for labor on logs.

SEC. 709. Every person performing labor upon, or who shall assist in obtaining or securing, saw logs, spars, piles, or other timber shall have a lien upon the same for the work or labor done upon or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp and any and all others who may assist in or about a logging camp shall be regarded as a person who assists in

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obtaining or securing the saw logs, spars, piles, or other timber mentioned herein.

Carter Code, sec. 280; Charlton Code, sec. 280.
Fisher *v.* G. W. Cone Lbr. Co. 89 Pac. Rep., 737).

Lien on lumber for labor performed thereunder.

SEC. 710. Every person performing labor upon or who shall assist in manufacturing saw logs or other timber into lumber has a lien upon such lumber while the same remains at the yard wherein manufactured, whether such work or labor was done at the instance of the owner of such lumber or his agent.

Carter Code, sec. 281; Charlton Code, sec. 281.
Alderson *v.* Lee (96 Pac. Rep., 234).

Lien for stumpage.

SEC. 711. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles, or other timber has a lien upon such logs, spars, piles, and timber for the price agreed to be paid for such privilege, or for the price such privilege or the stumpage thereon would be reasonably worth, in case there was no express agreement fixing the price.

Carter Code, sec. 282; Charlton Code, sec. 282.
Alderson *v.* Lee (96 Pac. Rep., 234).

Preferred liens.

SEC. 712. The liens provided for in this chapter are preferred liens and are prior to any and all other liens, and no sale, transfer, mortgage, or assignment of any saw logs, spars, piles, or other timber or manufactured lumber shall defeat the lien thereon as herein provided.

Carter Code, sec. 283; Charlton Code, sec. 283.

Limitation of lien for labor.

SEC. 713. The person rendering the service or doing the work or labor named in sections seven hundred and five and seven hundred and six of this chapter is only entitled to the liens as provided herein for services, work, or labor for the period of six months, or any part thereof next preceding the filing of the claims as provided in section seven hundred and fifteen of this title.

Carter Code, sec. 284; Charlton Code, sec. 284.
NOTE.—The Oregon statute specifically refers to section corresponding to secs. 280 and 281 of the Alaska Code. The references in the code are to secs. 276 and 277. On account of the language and repetition of 286, it is obvious that the reference intended in this section is to secs. 280 and 281. (Secs. 709, 710).

Limitation of lien for stumpage.

SEC. 714. The person granting the privilege mentioned in section seven hundred and eleven of this title is only entitled to the lien as provided therein for saw logs, spars, piles, and other timber cut during the six months next preceding the filing of the claim as provided in section seven hundred and fifteen.

Carter Code, sec. 285; Charlton Code, sec. 285.

Filing claim.

SEC. 715. Every person, within thirty days after the rendition of the services, or after performing the work or labor mentioned in sections seven hundred and five and seven hundred and six of this title, who shall claim the benefit hereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber was cut, or in which such lumber was manufactured, a claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible, all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any; and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth and shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of him-

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self or some other person for him to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

—form.

———, claimant, vs. ———, defendant.

Notice is hereby given that ——— claims a lien upon (describing property), being about ——— more or less, which were (cut or manufactured) in ——— precinct, District of Alaska, are marked thus ———, and are now lying in ———, for labor performed upon and assistance rendered in (cutting or manufacturing logs or lumber).

That the name of the owner, or reputed owner, is ———; that ——— employed said ——— to perform such labor and render such assistance upon the following terms and conditions (state contract, if any, or reasonable value); that said contract has been faithfully performed and fully complied with on the part of said ———, who performed labor and assisted in (cutting or manufacturing) for the period of ———; that said labor and assistance were so performed and rendered upon said property between the ——— day of ——— and the ——— day of ———, and the rendition of said service was closed on the ——— day of ———, and thirty days have not elapsed since that time; that the amount of claimant's demand for said services is ———; that no part thereof has been paid (except ———), and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ———, in which amount he claims a lien upon said property.

DISTRICT OF ALASKA, } ss:
*Precinct of* ———, }

I, ———, being first duly sworn, on oath say that I am the ——— named in the foregoing claim; that I have heard the same read, know the contents thereof, and believe the same to be true.

——— ———.

Subscribed and sworn to before me this——— day of ———.

——— ———.

Carter Code, sec. 286; Charlton Code, sec. 286.

Fisher *v.* G. W. Cone Lbr. Co. (89 Pac. Rep., 234). Alderson *v.* Lee (96 Pac. Rep., 737).

See note to sec. 713.

Filing claim for stumpage.

SEC. 716. Every person mentioned in section seven hundred and nine claiming the benefit thereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber were cut a claim, in substance the same as provided in section seven hundred and fifteen, and verified as therein provided.

Carter Code, sec. 287; Charlton Code, sec. 287.

Record of claim.

SEC. 717. The recorder must record every claim filed under the provisions of this title in books kept by him for that purpose, which records must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

Carter Code, sec. 288; Charlton Code, sec. 288.

NOTE.—See sec. 379, Political Code.

Limitation for bringing action.

SEC. 718. No lien provided for in this chapter shall bind any saw logs, spars, piles, lumber, or other timber for a longer period than six months after the claim, as herein provided for, has been filed, unless an action be commenced within that time to enforce the same; and no lien of any kind or character shall be had upon any lumber or logs after the same shall have been placed in any building or upon any spars or piles after the same shall have been put in use for the purpose for which they were intended.

Carter Code, sec. 289; Charlton Code, sec. 289.

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Jurisdiction.

SEC. 719. The liens provided for in this chapter shall be enforced by an action and shall be governed by the laws regulating the proceeding relating to the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

Carter Code, sec. 290; Charlton Code, sec. 290.

Against what timber lien may be enforced.

SEC. 720. Any person who shall bring an action to enforce a lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such action, has a right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, or other timber or manufactured lumber upon which he has performed labor, or which he has assisted in obtaining or securing, or which has been cut on his timberland during the six months mentioned in sections seven hundred and thirteen and seven hundred and fourteen, for all his labor upon or for all his assistance in obtaining or securing the logs, spars, piles, or other timber, or in manufacturing said lumber during the whole or any part of the six months mentioned in section seven hundred and thirteen, or for timber cut during the whole or any part of the six months mentioned in section seven hundred and fourteen.

Carter Code, sec. 291; Charlton Code, sec. 291.

Joinder of liens.

SEC. 721. Any number of persons claiming liens under this title may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

Carter Code, sec. 292; Charlton Code, sec. 292.

Judgment lien; execution.

SEC. 722. In such action judgment must be rendered in favor of each person having a lien for the amount due him, and the court shall order any property subject to the lien herein provided for to be sold by the marshal in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment pro rata, according to the amount of such judgment.

Carter Code, sec. 293; Charlton Code, sec. 293.

Sale when property is subject to loss or destruction.

SEC. 723. The judge of the court may, in vacation, upon motion, supported by affidavit, showing that the property is liable to loss or destruction, order any property subject to a lien as in this title provided to be sold by the marshal as personal property is sold on execution before the judgment is rendered, as provided in section seven hundred and twenty-two, and the proceeds of such sale must be retained by the marshal until judgment, to be applied as in the section directed.

Carter Code, sec. 294; Charlton Code, sec. 294.

Preventing the identification of timber subject to lien.

SEC. 724. Any person, firm, or corporation who shall injure, impair, or destroy, or who shall render difficult, uncertain, or impossible of identification any saw logs, spars, piles, or other timber knowing the same to be subject to a lien, as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for damages to the amount secured by his lien, which sum may be recovered by an action against such person, firm, or corporation, without bringing the suit as provided for in section seven hundred and nineteen of this code: *Provided*, In all such actions the principal debtor shall be made a codefendant.

Principal debtor to be made codefendant.

Carter Code, sec. 295; Charlton Code, sec. 295.

Fisher *v.* G. W. Cone Lbr. Co. (89 Pac. Rep., 737). Willett *v.* Kinney (104 Pac. Rep., 719).

NOTE.—Reference to sec. 302 is obviously in error. The reference intended for sec. 290 (our sec. 719).

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# CHAPTER THIRTY.

## OF UNCLAIMED PROPERTY.

Sec.
725. Consignee or depositary to enter receipt of property in book.
726. When bailee to notify owner of receipt of property.
727. When bailee may sell property.
728. Notice of sale, when to be given personally to owner; publication.
729. Proceeding when property not claimed.
730. Inventory and order of sale.
731. Sale by marshal, notice of.
732. Return of marshal, and fees.
733. Commissioner to pay charges; balance to clerk of court.
734. Clerk to make entry.
735. Owner may claim and receive deposit from clerk within five years.
736. If proceeds not claimed.
737. Sale of decaying and perishable property.
738. Fees of commissioner and marshal.

June 6, 1900.

31 Stat. L., 541–542.
R. S., 2d Supp., p. 1417.

Consignee or depositary to enter receipt of property in book.

SEC. 725. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof.

Carter Code, sec. 296; Charlton Code, sec. 296.

When bailee to notify owner of receipt of property.

SEC. 726. If such property shall not have been left with such consignee or bailee for the purpose of being forwarded, disposed of, or kept according to directions received by such consignee or bailee at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property.

Carter Code, sec. 297; Charlton Code, sec. 297.

When bailee may sell property.

SEC. 727. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may, at any time thereafter, proceed to sell the same in the manner provided in this chapter.

Carter Code, sec. 298; Charlton Code, sec. 298.

Notice of sale, when to be given personally to owner.

SEC. 728. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, or if service can not be made as above provided, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively in a newspaper if there be one published in the same precinct; if there be no newspaper published in the same precinct, then the notice shall be published in a newspaper nearest thereto in the district; the last publication of such notice shall be at least eighteen days previous to the time of sale.

Publication.

Carter Code, sec. 299; Charlton Code, sec. 299.

Proceeding when property not claimed.

SEC. 729. If the owner or person entitled to such property shall not take the same away and pay the charges thereon within sixty days from the first publication or service of notice as above provided, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to the commissioner of the same

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precinct an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication or service of the notice, and whether the owner of such property be known or unknown.

Carter Code, sec. 300; Charlton Code, sec. 300.

Inventory and order of sale.

SEC. 730. Upon the delivery to him of such affidavit the commissioner shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand that the property therein described be sold by the marshal at public auction.

Carter Code, sec. 301; Charlton Code, sec. 301.

Sale by marshal, notice of.

SEC. 731. It shall be the duty of the marshal receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more public places in such precinct, one of which shall be the post office, or immediately adjacent thereto, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from commissioners.

Carter Code, sec. 302; Charlton Code, sec. 302.

Return of marshal, and fees.

SEC. 732. Upon completing the sale the marshal making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the commissioner, together with the inventory and the proceeds of sale, after deducting his fees.

Carter Code, sec. 303; Charlton Code, sec. 303.

Commissioner to pay charges; balance to clerk of court.

SEC. 733. From the proceeds of such sale the commissioner shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of the sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the clerk of the district court, and deliver a statement therewith containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

Carter Code, sec. 304; Charlton Code, sec. 304.

Clerk to make entry.

SEC. 734. The clerk of the district court shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the commissioner.

Carter Code, sec. 305; Charlton Code, sec. 305.

Owner may claim and receive deposit from clerk within five years.

SEC. 735. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited with the clerk of the district court, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from him the amount so deposited in his office.

Carter Code, sec. 306; Charlton Code, sec. 306.

If proceeds not claimed.

SEC. 736. If the amount so deposited with the clerk of the district court shall not be claimed by the owner thereof or his legal representatives within the five years, the same shall belong to the United States.

Carter Code, sec. 307; Charlton Code, sec. 307.

Sale of decaying and perishable property.

SEC. 737. Property of a perishable kind and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, as provided in section seven hundred and thirty-one, the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this chapter: *Pro-*

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*vided*, Any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a commissioner, after inspection thereof, as provided in section seven hundred and thirty-one of this chapter.

Carter Code, sec. 308; Charlton Code, sec. 308.

Fees of commissioner and marshal.

SEC. 738. The fees allowed to any commissioner under the provisions of this chapter shall be three dollars for each day's service, and to any marshal the same fees as are allowed by law for sales upon execution, and ten cents a folio for making an inventory of property.

Carter Code, sec. 309; Charlton Code, sec. 309.

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# CHAPTER THIRTY-ONE.

## OF MORTGAGES OF PERSONAL PROPERTY.


Sec.
739. Chattels may be mortgaged.
740. Requisite to validity of chattel mortgage.
741. Mortgage by partnership.
742. Acknowledgment.
743. Filing of mortgage and duty of recorder.
744. When and how mortgage to be renewed.
745. Rights of subsequent mortgagee.
746. Mode of attachment of mortgaged chattels.
747. Certified copy in case of loss of original.
748. Extent of provisions of this chapter.
749. Foreclosure.
750. Satisfaction of mortgage.
751. Penalty for selling mortgaged chattels.
752. Mortgage on growing crops.


June 6, 1900.
31 Stat. L., 543-545.
R. S., 2d Supp., p. 1419.

SEC. 739. Any interest in personal property which is capable of being transferred may be mortgaged.

Carter Code, sec. 310; Charlton Code, sec. 310.

Chattels may be mortgaged.

Civil Code Montana (3860). Tuttle *v.* Merch. Nat. Bnk. (47 Pac. Rep., 203). Chicago Title & Trust Co. *v.* O'Marr (46 Pac. Rep., 809). Noyes *v.* Ross (59 Pac. Rep., 367). Bennett *v.* Tam (62 Pac. Rep., 780). Mass. Sheep Co. *v.* Humble (92 Pac. Rep., 527). Demero *v.* Graham (93 Pac. Rep., 268).

Requisite to validity of chattel mortgage.

SEC. 740. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value, unless—

(1) The possession of such property be delivered to and retained by the mortgagee; or

(2) The mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent from the precinct where such mortgage is executed, at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided.

Carter Code, 311; Charlton Code, sec. 311.

Civil Code Montana (3861). Washington Trust Co. *v.* Dunway (169 Fed. Rep., 45). Heilbronner *v.* Lloyd (42 Pac. Rep., 853). Chicago T. & T. Co. *v.* O'Marr (46 Pac. Rep., 809). Cope *v.* Minn. Type Fdry. Co. (49 Pac. Rep., 387). Westheimer *v.* Goodkind (60 Pac. Rep., 813). Reynolds *v.* Fitzpatrick (57 Pac. Rep., 452). Bennett *v.* Tam (62 Pac. Rep., 780). Stevens *v.* Curran (72 Pac. Rep., 753). Reynolds *v.* Fitzpatrick (72 Pac. Rep., 510). Stewart *v.* Hoffman (81 Pac. Rep., 3).

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Mortgage by partnership.

SEC. 741. Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required on behalf of the firm, and the mortgage so executed and the affidavit so made is as valid as if executed and made by all the partners or their agent or attorney in fact. In case of a corporation the president, secretary, or managing agent thereof may make the affidavit on its behalf.

Carter Code, sec. 312; Charlton Code, sec. 312.

Civil Code Mont. (3862). Bennett v. Tam (62 Pac., 780).

Acknowledgment.

SEC. 742. Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same, in the manner provided for the acknowledgment of conveyances of real property, before some officer authorized by law to take acknowledgments of deeds.

Carter Code, sec. 313; Charlton Code, sec. 313.

Civil Code, Mont. (3863). Westheimer v. Goodkind (60 Pac. Rep., 813). Bennett v. Tam (62 Pac. Rep., 780).

Filing of mortgage and duty of recorder.

SEC. 743. Every mortgage of personal property, together with the affidavits of the parties thereto or a copy thereof, certified to be correct by the person before whom the acknowledgment has been made, must be filed in the office of the recorder of the precinct where the mortgagor resides, and of the precinct where the property is at the time of the execution of the mortgage, or, in case he is not a resident of the district, then in the office of the recorder of the precinct where the property is at the time of the execution of the mortgage; and the recorder must, on receipt of such mortgage or copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book, properly ruled and kept for that purpose, the names of all the parties—the names of the mortgagors to be alphabetically arranged—the consideration thereof, the date of its maturity, and the time of filing the same.

Carter Code, sec. 314; Charlton Code, sec. 314.

Civil Code Montana (3864). Bennett v. Tam (60 Pac. Rep., 780). Rosenbaum Bros. Co. v. Ryan Bros. Cattle Co. (84 Pac. Rep., 1120).

When and how mortgage to be renewed.

SEC. 744. Every mortgage filed as provided in this chapter shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the term of one year a true copy of such mortgage, with a verified statement exhibiting the interest of the mortgagee in the property at the time the same is renewed, as claimed by virtue of such mortgage, is again filed in the office where the original was filed; and the effect of such renewal shall be to extend the lien of the mortgage as against the creditors, purchasers, and incumbrancers of the property for the further term of one year.

Carter Code, sec. 315; Charlton Code, sec. 315.
Bates Annotated Ohio Statutes (sec. 4155).

Rights of subsequent mortgagee.

SEC. 745. Any subsequent mortgagee of personal property upon which a prior mortgage exists, which has been extended or renewed as provided in section seven hundred and forty-four of this title, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, as shown by such verified statement and mortgage, or deposit the full amount thereof with the recorder of the precinct wherein such verified statement and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit shall be filed in the office and attached to said

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mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Carter Code, sec. 316; Charlton Code, sec. 316.
Civil Code Montana (3868).

Mode of attachment of mortgaged chattels.

SEC. 746. Personal property mortgaged may be taken on attachment or execution issued at the action of a creditor of the mortgagor; but before the property is so taken the officer must pay or tender to the mortgagee or the assignee thereof the amount of the mortgaged debt and interest, or must deposit the amount thereof with the recorder of the precinct in which the mortgage is filed, payable to the order of the mortgagee or the assignee thereof; and when the property then taken is sold under process the officer must apply the proceeds of the sale as follows:

(1) To the repayment of the sum paid to the mortgagee or the assignee of said mortgage, with interest from the date of such payment; and

(2) The balance, if any, in like manner as the proceeds of sale under execution are applied in other cases.

Carter Code, sec. 317; Charlton Code, sec. 317.
Civil Code Montana (3869). Cheney v. Caldwell (49 Pac. Rep., 897).

Certified copy in case of loss of original.

SEC. 747. A copy of any mortgage of personal property made, acknowledged, and filed as provided in this chapter, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in the District without further proof of the execution of the original, if the original be lost or out of the power of the person wishing to use it.

Carter Code, sec. 318; Charlton Code, sec. 318.
Civil Code Montana (3870).

Extent of provisions of this chapter.

SEC. 748. The provisions of the foregoing sections of this chapter shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property as shall have the effect of a mortgage or lien upon such property.

Carter Code, sec. 319; Charlton Code, sec. 319.
Civil Code Montana (3871). Bennett v. Tam (62 Pac. Rep., 780).

Foreclosure.

SEC. 749. An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the marshal to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the marshal, at the time of default, at the request of the mortgagee, must, and it is hereby made his duty to, advertise and sell the whole or any part of the mortgaged property, wherever it may be, and the mortgagee or his representative or assigns may, in good faith, purchase the property so sold, or any part thereof. The marshal may require an indemnity bond from the mortgagee or his assigns before taking possession of or selling the mortgaged property.

Carter Code, sec. 320; Charlton Code, sec. 320.
Civil Code Montana (3872). Mass. Sheep Co. v. Humble (92 Pac. Rep., 32).

Satisfaction of mortgage.

SEC. 750. Whenever the debt or obligation secured by any mortgage of personal property which has been filed in the office of the recorder

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as provided in this chapter shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage or copy thereof filed as aforesaid, and the fact of such discharge or satisfaction noted by the recorder in the book kept by him, as provided in section seven hundred and forty-three of this title, opposite the names of the parties to such mortgage.

Carter Code, sec. 321; Charlton Code, sec. 321.
Civil Code Montana (3874).

Penalty for selling mortgaged chattels.

SEC. 751. Any person having conveyed any goods, chattels, or personal property to another by mortgage who shall, during the existence of the lien or title created by such mortgage, sell the property or any part thereof to a third party for a valuable consideration without informing him of the existence and effect of such mortgage shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Carter Code, sec. 322; Charlton Code, sec. 322.
Civil Code Montana (3875). Hamilton *v.* Smith (92 Pac. Rep., 32).

NOTE.—As to mortgagor's criminal liability, see sec. 1927, chap. 3, title 14, Criminal Code.

Mortgage on growing crops.

SEC. 752. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of the mortgagor.

Carter Code, sec. 323; Charlton Code, sec. 323.
Civil Code Montana (3876).

## CHAPTER THIRTY-TWO.

### OF LIMITED PARTNERSHIPS.

Sec.
753. Limited partnerships, for what purpose formed.
754. General and special partners, their liability and definition of.
755. Certificate for limited partnership, what to contain and where filed.
756. Certificate to be published; effect of false statement therein.
757. Limited partnership, how continued and renewed.
758. Effect of using name of special partner.
759. Capital stock not to be reduced during partnership.
760. Actions, etc., by and against members of partnership.
761. Dissolution of partnership, notice, how filed and published.
762. When to be considered general partners.

June 6, 1900.
31 Stat. L., 545–546.
R. S., 2d Supp., p. 1421.

Limited partnerships, for what purpose formed.

SEC. 753. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business may be formed within the district by two or more persons, upon the terms and subject to the conditions and limitations contained in this chapter.

Carter Code, sec. 324; Charlton Code, sec. 324.

General and special partners, their liability and definition of.

SEC. 754. A limited partnership may consist of one or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of one or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership except as in this chapter specially provided.

Carter Code, sec. 325; Charlton Code, sec. 325.
North Pac. Lbr. Co. *v.* Spore (75 Pac. Rep., 890). Willard *v.* Bullen (67 Pac. Rep., 924).



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Certificate for limited partnership, what to contain and where filed.

SEC. 755. The persons forming such partnerships shall make and severally subscribe a certificate in duplicate and file one of such certificates with the recorder of the precinct in which the principal place of business of the partnership is to be. Before being filed the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds; and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Carter Code, sec. 326; Charlton Code, sec. 326.

Certificate to be published; effect of false statement therein.

SEC. 756. Such partnership can not commence before the filing of the certificate of partnership; and if a false statement is made in such certificate all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four successive weeks immediately after the filing of the certificate of partnership, publish a copy of the same in some newspaper published in the precinct where the principal place of business of the partnership is, or, if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed the partnership is to be deemed general.

Carter Code, sec. 327; Charlton Code, sec. 327.

Limited partnership, how continued and renewed.

SEC. 757. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof in the same manner provided in this chapter for the formation of such partnership originally; and every such partnership not renewed or continued as herein provided from and after the expiration thereof according to the original certificate shall be deemed a general partnership.

Carter Code, sec. 328; Charlton Code, sec. 328.

Effect of using name of special partner.

SEC. 758. The business of the partnership shall be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner; or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only.

Carter Code, sec. 329; Charlton Code, sec. 329.

Capital stock not to be reduced during partnership.

SEC. 759. During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership the property or assets thereof are not sufficient to satisfy the partnership debts, then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively.

Carter Code, sec. 330; Charlton Code, sec. 330.

Actions, etc., by and against members of partnership.

SEC. 760. All actions or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners

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only, except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join or be joined therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock as provided in the preceding section.

Carter Code, sec. 331; Charlton Code, sec. 331.

Dissolution of partnership, notice, how filed and published.

SEC. 761. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership, or, the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for publication of the certificate of partnership.

Carter Code, sec. 332; Charlton Code, sec. 332.

When to be considered general partners.

SEC. 762. In all cases not otherwise provided for in this chapter all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

Carter Code, sec. 333; Charlton Code, sec. 333.

Carstens Bros. *v.* Frye-Bruhn & Co. (1 Alaska Rep., 140). In re Estate Gladough (1 Alaska Rep., 649). Garside *v.* Norval (1 Alaska Rep., 19). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 726). Miners Co-op. Assn. *v.* Steamer Monarch (2 Alaska Rep., 383). Marks *v.* Gates (2 Alaska Rep., 519). Runner *v.* Woltke (2 Alaska Rep., 391). Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 678). McMahon *v.* Meehan & Larson (2 Alaska Rep., 278). Fish *v.* First Nat. Bank (150 Fed. Rep., 534; 80 C. C. A., 266). Pearce *v.* Sutherland (164 Fed. Rep., 609; 90 C. C. A., 519).

## CHAPTER THIRTY-THREE.

### INJURY TO LIVE STOCK BY RAILROADS.


Sec.
763. Railway companies liable for killing stock, when.
764. What is lawful fencing of track.
765. Notice of animal killed or injured.
766. Penalty for failing to file notice.
767. Proof of killing or injury to be deemed conclusive evidence of negligence.
768. Service of summons in cases arising under the provisions of this chapter. Legal fence, definition of.


June 6, 1900.
31 Stat. L., 547–548.
R. S., 2d Supp., 1423.

Railway companies liable for killing stock, when.

SEC. 763. Any person, persons, company, or corporation, or lessee or agent thereof, owning or operating any railroad within the District, shall be liable for the value of any horses, mules, colts, cows, bulls, calves, hogs, or sheep killed, and for reasonable damages for any injury to any such live stock upon or near any unfenced track of any railroad in the District, wherever such killing or injury is caused by any moving train or engine or cars upon such track. A substantial wire fence four feet high, constructed with four strands of wire or its equivalent, shall be a legal fence.

Carter Code, sec. 334; Charlton Code, sec. 334.

Heindman *v.* O. R. & N. Co. (22 Pac. Rep., 116). Sullivan *v.* O. R. & N. Co. (24 Pac. Rep., 408). Eaton *v.* O. R. & N. Co. (24 Pac. Rep., 413). Moses *v.* S. P. Co. (23 Pac. Rep., 498). Eaton *v.* McNeill (49 Pac. Rep., 874). Meeker *v.* N. P. Co. (28 Pac. Rep., 639). Wilmot *v.* Oregon R. Co. (87 Pac. Rep., 528). High *v.* S. P. Co. (88 Pac. Rep., 961). Jackson *v.* Sumpter Valley R. Co. (93 Pac. Rep., 356). Meier *v.* N. P. Co. (93 Pac. Rep., 690).

What is lawful fencing of track.

SEC. 764. No railroad track shall be deemed to be fenced within the meaning of this chapter unless such track is guarded by such fence

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against the entrance thereon of any such live stock on either side of the track, and not more than one hundred feet distant therefrom: *Provided*, Complete natural defenses against the entrance of such stock upon the track, such as natural walls or deep ditches, shall be deemed and held to be a fence within the meaning of this chapter when the same, in connection with other and ordinary lawful fences, form a continuous guard and defense against the entrance of such live stock upon the track.

Carter Code, sec. 335; Charlton Code, sec. 335.
High *v.* S. P. Co. (88 Pac. Rep., 961). | Meier *v.* N. P. Co. (93 Pac. Rep., 690).

Notice of animal killed or injured.

SEC. 765. Whenever any such live stock mentioned in section seven hundred and sixty-three is so killed or injured upon the unfenced railroad track of any railroad in the District, the person, persons, company, or corporation owning or operating such railroad, or his or their lessees or agents, or some proper and authorized agent or employee thereof, shall immediately cause to be filed a notice of such killing or injury by filing a concise description of the animal or animals so killed or injured, including any and all brands, earmarks, or other marks of ownership, and, if only injured, the nature of such injury, with the railroad agents at the two extremities of the section on which such killing or injury took place; the description shall be open to inspection at all reasonable hours of each week day for one month after such killing or injury took place.

Carter Code, sec. 336; Charlton Code, sec. 336.
Meier *v.* N. P. Co. (93 Pac. Rep., 690).

Penalty for failing to file notice.

SEC. 766. Any person, persons, company, or corporation, or his or their lessees or authorized agents, owning or operating any railroad within the district, who shall neglect or fail to file or cause to be filed the notice provided for in the preceding section, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not exceeding two hundred dollars for each offense.

Carter Code, sec. 337; Charlton Code, sec. 337.
Meier *v.* N. P. Co. (93 Pac. Rep., 690).

Proof of killing or injury to be deemed conclusive evidence of negligence.

SEC. 767. In every action for the recovery of the value of any live stock mentioned in section seven hundred and sixty-three so killed, or for damages for injury to the same, as hereinbefore provided, proof of such killing or injury shall of itself be deemed and held to be conclusive evidence of negligence upon the part of the person, persons, company, or corporation, or his or their lessees or agents, owning or operating such railroad: *Provided*, Contributory negligence on the part of the plaintiff in such action may be set up as a defense: *But provided further*, The allowing of stock to run at large upon common unfenced range or upon inclosed land owned or in possession of the owner of such stock shall not be deemed or held to be such contributory negligence: *Provided further*, In any such action proof of willful intent on the part of the plaintiff therein to procure the killing or injury of any such stock in the manner aforesaid shall defeat the recovery of any damages for such killing or injury.

Carter Code, sec. 338; Charlton Code, sec. 338.
Meier *v.* N. P. Co. (93 Pac. Rep., 690).

Service of summons in cases arising under the provisions of this chapter.

SEC. 768. In any action authorized by this code service of summons or any other necessary process may be made upon any person, persons, company, or corporation, or his or their lessees or agents, owning or operating any railroad in the district, by personal service upon any authorized agent thereof residing or stationed in the precinct where such action is brought.

Carter Code, sec. 339; Charlton Code, sec. 339.
Meier *v.* N. P. Co. (93 Pac. Rep., 690).

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# CHAPTER THIRTY-FOUR.

## OF THE ESTABLISHMENT AND REGULATION OF FERRIES.


Sec.
769. Ferry license.
770. Payment therefor.
771. To whom license granted.
772. Notice of application for license.
773. Undertaking of applicant.
774. General duties of ferry keepers.
775. Commissioner to fix regular fare; penalty for illegal fare.
776. Commissioners may alter rates of fare.
777. List of rates to be posted up near ferry.
778. Persons to be ferried in the order of arrival; penalty for not.
779. Ferry keeper, exclusive right to transport.
780. How licenses to keep ferry forfeited.
781. Penalty for keeping ferry without license.


June 6, 1900.
31 Stat. L., 548–550.
R. S., 2d Supp., p. 1424.

Ferry license.

SEC. 769. The commissioner of any precinct in the district may grant a license to any person applying therefor to keep a ferry across any lake or stream within his precinct, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioner, not exceeding five years: *Provided, however*, Nothing in this chapter shall be so construed as to empower the commissioner of any precinct in the district to grant a license for a ferry across any bay or arm of the sea.

Carter Code, sec. 340; Charlton Code, sec. 340.

Hacklett *v.* Wilson (6 Pac. Rep., 652). Montgomery *v.* Multonomah R. Co. (3 Pac. Rep., 435). Hackett *v.* Multonomah R. Co. (6 Pac. Rep., 569).

Payment therefor.

SEC. 770. The commissioner shall tax such sum as shall appear reasonable, not less than one nor more than one hundred dollars per annum, for such license; and the person to whom such license shall be granted shall pay to such commissioner the tax for one year in advance, taking his receipt therefor; and upon the payment of such license tax the commissioner shall issue such license under the seal of his office, and deposit the sum so received with the clerk of the district court, who shall turn the same, according to law, into the Treasury of the United States.

Carter Code, sec. 341; Charlton Code, sec. 341.

To whom license granted.

SEC. 771. Unless otherwise provided by law no such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless the landing place of such proposed ferry shall be on Government land at the end of a street in an incorporated city or town, or unless the owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the commissioner shall not grant the same unless proof be made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the precinct, at least thirty days before the application before the commissioner is made, unless the landing place of such proposed ferry shall be at the end of a street in an incorporated city or town as aforesaid.

Carter Code, sec. 342; Charlton Code, sec. 342.

Gaut *v.* Drew (1 Or. Rep., 35). Mills *v.* Learn (2 Or. Rep., 217). Beckley *v.* Learn (3 Or. Rep., 545). Knott *v.* Jefferson St. Ferry Co. (9 Or. Rep., 530). Knott *v.* Fursh (2 Or. Rep., 237). Price *v.* Knott (8 Or. Rep., 438).

Notice of application for license.

SEC. 772. Every person intending to apply for a license to keep a ferry at any place shall give notice of such intention by posting up notices in at least three public places in the neighborhood where the ferry is proposed to be kept thirty days prior to the time when application shall be made: *Provided*, When application shall be made for

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the renewal of the license, where the former license has expired, the same may be granted or renewed without previous notice or petition.

Carter Code, sec. 343; Charlton Code, sec. 343.

Undertaking of applicant.

SEC. 773. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond or undertaking to the United States, with one or more sureties, to be approved by the commissioner, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep the ferry according to law, the bond to be filed in the office of the commissioner; and if default shall at any time be made in the condition of such bond or undertakings, damages, not exceeding the penalty, may be recovered by any person aggrieved.

Carter Code, sec. 344; Charlton Code, sec. 344.

General duties of ferry keepers.

SEC. 774. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair by cutting away the bank of the lake or stream so that persons and property may be embarked and landed without danger or unnecessary delay.

Carter Code, sec. 345; Charlton Code, sec. 345.

Commissioner to fix regular fare; penalty for illegal fare.

SEC. 775. Whenever the commissioner of any precinct shall grant a license to keep a ferry across any lake or stream he shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars over and above the amount which shall have been illegally received, to be recovered before any commissioner having jurisdiction.

Carter Code, sec. 346; Charlton Code, sec. 346.

Montgomery *v.* Multonomah R. Co. (1 Or. Rep., 283). (3 Pac. Rep., 435). Stephens *v.* Powell

Commissioners may alter rates of fare.

SEC. 776. The commissioners of the several precincts be, and they are hereby, authorized to fix, alter, and establish from time to time the rates of ferriage to be levied and collected at all ferries now established or hereafter to be established by law within or bordering upon the precinct lines of any of the precincts in said district.

Carter Code, sec. 347; Charlton Code, sec. 347.

List of rates to be posted up near ferry.

SEC. 777. Every person licensed to keep a ferry shall post up in some conspicuous place near his ferry landing a written or printed list of the rates of ferriage which are chargeable by law at the ferry, which list of rates shall at all times be written in a plain, legible manner and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list it shall not be lawful to charge or take any ferriage or compensation at such ferry during the time of such delinquency.

Carter Code, sec. 348; Charlton Code, sec. 348.

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Persons to be ferried in the order of arrival; penalty for not.

SEC. 778. All persons shall be received into the ferryboats and conveyed across the stream over which such ferry shall be established according to their arrival at the same; and if any keeper of a ferry shall act contrary to this regulation he shall forfeit and pay the sum of three dollars for every such offense to the party aggrieved, to be recovered before any commissioner having jurisdiction: *Provided*, Public officers on urgent business, postriders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over where all can not go at the same time.

*Proviso.*

Carter Code, sec. 349; Charlton Code, sec. 349.

Ferry keeper, exclusive right to transport.

SEC. 779. Every person licensed to keep a ferry according to the provisions of this chapter shall have the exclusive privilege of transporting all persons and property over and across the stream where such is established, and shall be entitled to all the fare arising by law therefrom: *Provided*, Nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over any person, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

*Proviso.*

Carter Code, sec. 350; Charlton Code, sec. 350.

How licenses to keep ferry forfeited.

SEC. 780. If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in section seven hundred and seventy-four of this title, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreebly to the provisions of this chapter; or if the same shall be abandoned, disused, or unfrequented for the space of six months at any one time, it shall be lawful for the commissioner of the proper precinct, on complaint being made in writing, to summon the person licensed to keep such ferry to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced and the laws of the district, which decision when made shall be valid to all intents and purposes, subject to be reviewed by the district court: *Provided*, If any ferry shall be disused by reason of the stream over which the same is established being frozen or fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section.

*Proviso.*

Carter Code, sec. 351; Charlton Code, sec. 351.

Penalty for keeping ferry without license.

SEC. 781. Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same shall pay a fine of ten dollars for each offense, to be collected for the use of the district by action before any commissioner having jurisdiction; and any person is hereby authorized to bring such action: *Provided*, It shall not be considered unlawful for any person to transport any other person or his property over any stream for hire when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

*Proviso.*

Carter Code, sec. 352; Charlton Code, sec. 352.
Multonomah County *v.* Knott (6 Or. Rep., 280).

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# CHAPTER THIRTY-FIVE.

## OF TRAVEL ON PUBLIC HIGHWAYS.


Sec.
782. Persons meeting on highway to turn to the right.
783. Penalty and damage for violation of preceding section.
784. Employer liable for wrongdoing of servant; action against the one a bar, etc.
785. Rules of travel for traction engines, etc.
786. Whistles not to be blown on highways and streets.
787. Driving steam engines over public bridge.
788. Penalty.


June 6, 1900.
31 Stat. L., 550–551.
R. S., 2d Supp., p. 1427.

Persons meeting on highway to turn to the right.

SEC. 782. Whenever any persons driving any vehicles shall meet on any public highway in the district, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with or interrupting the other.

Carter Code, sec. 353; Charlton Code, sec. 353.

Penalty and damage for violation of preceding section.

SEC. 783. If any person shall willfully violate the provisions of the preceding section he shall forfeit and pay the sum of five dollars for every such violation to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation.

Carter Code, sec. 354; Charlton Code, sec. 354.

Employer liable for wrongdoing of servant; action against the one a bar, etc.

SEC. 784. Whenever any person driving a vehicle who shall violate the provisions of section seven hundred and eighty-two is at the time in the employ of another, such other person is liable for the penalty herein provided the same as if he were the driver of such vehicle at the time of such violation; but an election to sue either the driver or employer is a bar to an action against the other.

Carter Code, sec. 355; Charlton Code, sec. 355.

Rules of travel for traction engines, etc.

SEC. 785. It shall be the duty of any person or persons running or propelling or in charge of any portable or traction engine over the public highways in the district to bring the portable or traction engine to a stop when within one hundred yards of any person or persons going in the opposite direction with a team or teams, and remain stationary until the team or teams shall have passed by.

Carter Code, sec. 356; Charlton Code, sec. 356.

Whistles not to be blown on highways and streets.

SEC. 786. It shall be unlawful to blow the whistle of such portable or traction engines while upon the public highway or while passing over the streets of any city, town, or village in the district.

Carter Code, sec. 357; Charlton Code, sec. 357.

Driving steam engines over public bridge.

SEC. 787. It shall be unlawful for any person or persons to drive any traction or portable engine of over two tons weight over any bridge or culvert on any public street or highway within the district without using on such bridge or culvert, for the purpose of securing its safety, four stout pieces of plank, each of which shall be at least ten feet in length, one foot in width, and two inches in thickness, two of the pieces of plank to be always under the wheels of the traction or portable engine while it shall be crossing the bridge or culvert.

Carter Code, sec. 358; Charlton Code, sec. 358.
Toedtemeier *v.* Clackamas County (54 Pac. Rep., 954).

Penalty.

SEC. 788. The penalty for the violation of any of the provisions of the three preceding sections shall be a fine of not less than one dollar nor more than fifty dollars for each offense, and in addition to such

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fine any person causing damage to the bridge or culvert shall be liable for all damages which may result from the crossing of such traction or portable engine.

Carter Code, sec. 359; Charlton Code, sec. 359.

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# CHAPTER THIRTY-SIX.

## OF INSURANCE.


Sec.
789. What companies, etc., may transact business.
790. Service of process on insurance companies.
791. Fraternal and beneficial societies.
792. To whom above provisions apply.
793. Penalty for violations.
794. Fees for filing.
795. Form of oath.
796. Common law made applicable.
797. Conflicting acts repealed.


June 6, 1900.
31 Stat. L., 551–552.
R. S., 2d Supp., p. 1428.

What companies etc., may transact business.

SEC. 789. No company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire, or marine insurance business in the district until he or it has filed in the office of the secretary of the district a certificate by the secretary of state or other proper officer of some State of the United States, setting forth that the said company, corporation, association, firm, or individual has been qualified to carry on the business of insurance in such State in accordance with the laws thereof.

Carter Code, sec. 360; Charlton Code, sec. 360.

Service of process on insurance companies.

SEC. 790. No insurance company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire, or marine insurance business in the district until it shall have filed with the clerk of each division of the district court a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of the district to receive and accept service in any proceeding in a court of justice of the district. If any attorney of any insurance company appointed under the provisions of this section shall remove from the district or become disqualified in any manner from accepting service, and if any citizen or resident of the district shall have any claim by virtue of any insurance policy issued by any such company not represented by attorney in the district, valid service may be made on such company by service on the clerk of the district court or any division thereof: *Provided*, In such case the clerk of the district court shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service by mail, postpaid: *And provided further*, In such case no proceedings shall be had within sixty days after such service on the clerk.

Carter Code, sec. 361; Charlton Code, sec. 361.

Continental Ins. Co. *v.* Riggen (48 Pac. Rep., 476). Gilbert *v.* New Zealand Ins. Co. (49 Fed. Rep., 886).

Fraternal and beneficial societies.

SEC. 791. All orders or secret societies, such as Masons, Odd Fellows, Druids, Knights of Pythias, Ancient Order of United Workmen, Modern Woodmen of America, and other benevolent, fraternal, or cooperative societies associated or incorporated for the sole purpose of mutual protection and relief of its members only, and for the payment of stipulated sums of money to the families of deceased members, or for property of its members only destroyed by fire, are hereby declared not to be fire or insurance companies in the sense

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and meaning of this chapter, and they are exempt from the provisions hereof.

Carter Code, sec. 362; Charlton Code, sec. 362.

To whom above provisions apply.

SEC. 792. The provisions of this chapter, under either term or designation of company, corporation, association, firm, or individual in either case, where either term or designation is used, shall apply to any insurer, company, corporation, association, firm, or individual engaged as insurers or who may hereafter engage as insurers in the district, or who may engage in offering or affording indemnity against the casualties of fire or life.

Carter Code, sec. 363; Charlton Code, sec. 363.

Penalty for violations.

SEC. 793. Any officer, agent, or employee of any insurance company or other person violating any of the provisions of this chapter shall be fined not less than one hundred nor more than five hundred dollars, and in default of payment of such fine shall be imprisoned not less than ten days nor more than six months.

Carter Code, sec. 364; Charlton Code, sec, 364.

Fees for filing.

SEC. 794. The secretary of the district shall collect from each company or person for the service provided in this chapter the following fees: For filing certificate of qualification, five dollars; for filing power of attorney, five dollars; and the secretary shall account for the same in the manner provided by law in the case of other fees collected or received by them.

Carter Code, sec. 365; Charlton Code, sec. 365.

Form of oath.

SEC. 795. Every officer in the district for whom a special oath is not provided by law shall, before entering upon the duties of his office, take and subscribe to the following oath:

I, ———, do solemnly swear (or affirm) that I will defend and support the Constitution of the United States, and perform all the duties of the office on which I am about to enter, and therein do equal right and justice to all men, so help me God.

Carter Code, sec. 366; Charlton Code, sec. 366.

Common law made applicable.

SEC. 796. So much of the common law as is applicable and not inconsistent with the Constitution of the United States or with any law passed or to be passed by the Congress is adopted and declared to be law within the District of Alaska.

Carter Code, sec. 367; Charlton Code, sec. 367.

Valentine *v.* Roberts (1 Alaska Rep., 536, 540). In re Burkell (2 Alaska Rep., 117). Ketchikan Co. *v.* Citizens Co. (2 Alaska Rep., 123). McFarland *v.* Alaska Perseverance Mining Co. (3 Alaska Rep., 322, 329). McCloskey *v.* Pac. Coast Co. (160 Fed. Rep., 794). Van Dyke *v.* Midnight Sun M. & D. Co. (177 Fed. Rep., 85).

Interpretation of words of singular number, etc.

SEC. 797. That in the interpretation of this act words of the singular number shall be deemed to include their plurals, and that words of the masculine gender shall be deemed to include the feminine, as the case may be. Whenever a section of this act refers to another section, a section of the same title is intended, unless the contrary clearly appears. No person shall be deprived of any existing legal right or remedy by reason of the passage of this act, and all civil actions or proceedings commenced in the courts of the District before or within sixty days after the approval of this act may be prosecuted to final judgment under the law now in force in the District, or under this act. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Existing rights unaffected.

Pending actions.

Repeal.

Carter Code, sec. 368; Charlton Code, sec. 368.

Alaska Gold Mining Co. *v.* Ebner (2 Alaska Rep., 611, 614.)

NOTE.—Secs. 795, 796, and 797 do not really belong to this chapter, but they were left in because they were the last sections of the original act of June 6, 1900, and they are properly indexed.

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# CHAPTER THIRTY-SEVEN.

## OF THE FORMATION OF PRIVATE CORPORATIONS.


Sec.
798. Private corporations authorized; purposes.
799. Articles to be filed; contents.
800. Effect of certified copy.
801. Powers conferred by charter.
802. Real-estate holdings.
803. Board of directors; powers.
804. Election of directors.
805. Quorum of board.
806. Meetings.
807. Stock; payment for; assessments.
808. Powers of trustees, etc., to vote.
809. Stock pledged.
810. Dividend limitations; distribution on dissolution.
811. Consideration for stock; liability of stockholders.
812. Liability of trustees, etc.
813. By-laws, etc.
814. Capital-stock changes.
815. Action of stockholders to change capital stock.
816. Amendments to charter.
817. Annual list of officers to be filed.
818. Dissolution.
819. Continuance for closing affairs, etc.
820. Annual statement to be published.


Mar. 2, 1903.
32 Stat. L., 947-952.

Private corporations authorized.

Purposes.

SEC. 798. Three or more adult persons, bona fide residents of the District of Alaska, may form a corporation in the manner and subject to the limitations provided in this chapter for the following purposes, to wit:

"First. To construct, own, and operate railroads, tramways, street railways, wagon roads, canals, flumes, and telegraph and telephone lines in Alaska.

"Second. To acquire, hold, and operate mines in Alaska.

"Third. To carry on the fishery industry in all its branches in Alaska and in the waters contiguous and adjacent thereto.

"Fourth. To construct and operate smelters, electric and other power and lighting plants, docks, wharves, elevators, warehouses, and hotels in Alaska.

"Fifth. To carry on trade, transportation, agriculture, lumbering, and manufacturing in Alaska."

Charlton Code, sec. 1, page 88.

Pearce *v.* Sutherland (3 Alaska Rep., 303). Ebner *v.* Alaska Mildred Gold Mining Co. (167 Fed. Rep., 456; 93 C. C. A., 92). Alaska G. M. Co. *v.* Ebner (2 Alaska Rep., 611).

Articles to be filed.

SEC. 799. Any three or more persons who may desire to form a corporation for one or more of the purposes specified in the preceding section shall make and subscribe written articles of incorporation in triplicate and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the secretary of the District of Alaska, and another in the office of the clerk of the district court of the recording division in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation, and each copy so filed shall be recorded by the officer with whom filed in a book to be kept by him for that purpose.

Contents.

"Said articles shall contain and state:

"First. The name of the corporation, the nature and character of the business, and the principal place of transacting the same.

"Second. The time of commencement and the period of continuance of said corporation, which shall not exceed fifty years.

"Third. The amount of capital stock of said corporation, and how the same shall be paid in, and the number and par value of the shares.

"Fourth. The highest amount of indebtedness or liability to which said corporation shall at any time be subject.

"Fifth. The names and places of residence of the persons forming such corporation.

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"Sixth. The names of the first board of directors, and in what officers or persons the government of the corporation and the management of its affairs shall be vested, and when the same shall be elected and their terms of office.

"Seventh. Said articles of incorporation may be amended when authorized by the vote of a majority of the stock given at a regular meeting of the stockholders. Such amended articles shall be executed and acknowledged by the board of directors, or a majority of them, and shall be filed and recorded in the same places and manner as the original articles."

Charlton Code, sec. 2, pp. 88–89.

Effect of certified copy.

SEC. 800. A copy of any articles of incorporation filed pursuant to this chapter, and certified by the clerk of the district court in which the same is filed, or one of his deputies, or by the secretary of the District of Alaska, shall be received as prima facie evidence of the facts therein stated.

Charlton Code, sec. 3, p. 89.

Powers conferred by charter.

SEC. 801. When the articles of incorporation have been filed and recorded, the persons who have executed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in law under the name stated in the articles of incorporation, and by such corporate name shall have succession for the period limited in this chapter and shall have power—

"(a) To sue and to be sued in any court having jurisdiction;

"(b) To make and use a common seal, and alter the same at pleasure;

"(c) To purchase, hold, mortgage, sell, and convey real and personal property, except stock in other corporations, subject to the limitation hereinbefore prescribed;

"(d) To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation;

"(e) To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no director shall be removed from office unless by a vote of two-thirds of the stock;

"(f) To make by-laws not inconsistent with the laws of the District of Alaska and the laws and Constitution of the United States;.

"(g) To manage its property, regulate its affairs, transfer its stock, and to carry on all kinds of business within the objects and purposes of the corporation as expressed in the articles of incorporation."

Charlton Code, sec. 4, p. 89.

Griffin *v.* International Trust Co. (161 Fed. Rep., 48; 88 C. C. A., 212). | Nowell *v.* International Trust Co. (169 Fed. Rep., 497; 94 C. C. A., 589).

Real estate holdings.

SEC. 802. All corporations incorporated under this chapter, and all corporations or joint stock companies organized under the laws of the United States, or the laws of any State or Territory of the United States, and authorized to do business in the District of Alaska, shall have the right to acquire and hold only such real estate as may be necessary to carry on their corporate business.

Charlton Code, sec. 5, p. 89.

Board of directors. Powers.

SEC. 803. The corporate powers of the corporation shall be exercised by a board of not less than three directors who shall be stockholders in the corporation, a majority of whom shall be residents of the District of Alaska, who shall, before entering upon the duties of their office, severally take and subscribe an oath to faithfully perform their duties as such directors, and who shall, after the expiration of the terms of the directors first elected, be annually elected by the

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stockholders at such time and place within the District of Alaska and upon such notice and in such manner as shall be directed by the by-laws or articles of incorporation of the corporation; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to cast as many votes as he may own or represent shares of stock, and the person or persons receiving a majority of the votes of all the shares of stock voted, a majority of the stock being represented at such election, shall be director or directors. Whenever any vacancy shall happen among the directors by death, resignation, or otherwise, except by removal and the election of a successor, it shall be filled by appointment of the board of directors for the unexpired term of such vacancy.

Charlton Code, sec. 6, p. 89.

Election of directors.

SEC. 804. If it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws or articles of incorporation of the corporation, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day after due notice, prescribed by the by-laws, to hold an election for directors in such manner as shall be provided for in the by-laws or articles of the corporation, and all directors duly elected shall hold their offices until their successors are elected and qualified.

Charlton Code, sec. 7, p. 89.

Quorum of board.

SEC. 805. A majority of the whole number of the directors shall form a quorum of the board of directors for the transaction of business, and every decision of a majority of the directors duly assembled as a board shall be valid as a corporate act.

Charlton Code, sec. 8, p. 90.

Meetings.

SEC. 806. Except as otherwise provided in the articles of incorporation or by-laws of the corporation, the first and all subsequent meetings of the directors shall be called by a notice signed by one or more persons named as directors in the certificate, or their successors, setting forth the time and place of the meeting, which notice shall be delivered personally to each director if he resides in Alaska, and published at least twenty days in some newspaper of general circulation at or nearest the principal place of business of the corporation and in the District of Alaska.

Charlton Code, sec. 9, p. 90.

Stock.

SEC. 807. The stock of the corporation shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the articles of incorporation or the by-laws of the corporation; but no transfer shall be valid except between the parties thereto until the same shall have been entered upon the books of the corporation so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares, and the date of transfer.

Payment for.

"The stockholders of any corporation formed under this chapter may, in the by-laws or articles of the corporation, prescribe the times, manner, and amounts in which payments of the stock subscribed by them, respectively, shall be made; but in case the same shall not be so prescribed, the directors shall have the power to demand and call in from the stockholders the sum or sums unpaid of the stock subscribed for or taken at such time, and in such manner, payments or installments, as they may deem proper. In all cases sixty days' notice of each assessment shall be given each stockholder personally or by registered letter if his post-office address is known to any officer of the corporation, and by publication weekly for eight consecutive weeks in some newspaper of general circulation published at or nearest to the principal place of business of the corporation in the District of

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Alaska. If, after such notice has been given, any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessments upon all shares held by him, her, or them at that time. The sale of such shares shall be made as prescribed in the articles or by-laws of the corporation, but shall in no case be made at the office of the corporation. No sale shall be made except at public auction, to the highest bidder, after notice given as in the case of notices of assessment; and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares or portion of a share, as the case may be, shall be deemed the highest bidder: *Provided*, That after the delivery of the certificates of stock to the stockholders no call shall be made at any one time for more than ten per centum of the par value of the stock, and that calls shall not be made oftener than once in thirty days, unless otherwise provided in the articles of incorporation.

*Proviso.* Assessments.

Charlton Code, sec. 10, p. 90.

Powers of trustees, etc., to vote.

SEC. 808. Whenever any stock is held by a person as executor, administrator, guardian, trustee, or in any other such representative capacity, he shall represent such stock at all meetings of the corporation, and may vote accordingly as a stockholder in person or by proxy.

Charlton Code, sec. 11, p. 90.

Stock pledged.

SEC. 809. Any stockholder may pledge his stock by delivery of the certificate or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

Charlton Code, sec. 12, p. 90.

Dividend limitations.

SEC. 810. It shall not be lawful for the directors to make any dividend in new or additional stock, or to make any dividend, except from the net profits arising from the business of the corporation, or to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the corporation, or to reduce the capital stock of the corporation unless in the manner prescribed in this chapter or in the articles or amended articles of incorporation or by-laws; and in case of any violation of the provisions of this section the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall in their individual or private capacities, be jointly and severally liable to the corporation and the creditors thereof, in event of its dissolution, to the full amount so divided or reduced or paid out: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of the corporation which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

*Proviso.* Distribution on dissolution.

Charlton Code, sec. 13, p. 91.

Consideration for stock.

SEC. 811. No corporation shall issue any of its stock, except in consideration of money, labor, or property estimated at its true money value. Each and every stockholder shall be personally liable to the creditors of the company for the amount that remains unpaid upon the par value of his stock.

Liability of stockholders.

Charlton Code, Sec. 14; p. 91.

Liability of trustees, etc.

SEC. 812. No person holding stock as an executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the corporation; but the person pledging the stock shall be considered as holding the same and shall be liable as a stockholder, and the estate

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and funds of the owner of stock in the hands of an executor, administrator, guardian, or trustee holding the stock shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name.

Charlton Code, sec. 15, p. 91.

By-laws, etc.

SEC. 813. Every corporation organized under this chapter shall within one month after filing articles of incorporation, adopt a code of by-laws for its government, and shall have its principal office in the District of Alaska and keep in such office its general and principal books of account, including its stock books and record books, and its principal managing officer or superintendent shall reside within the District of Alaska. Every such corporation shall keep correct and complete books of account of its business, and a correct and complete record of all its proceedings, including such as relate to the election of its officers. Every such corporation shall also keep a book containing the names of its stockholders ever since its organization, showing the place of residence, amount of stock held, the amount paid on such stock, and time of transfer of stock. The books of every such corporation shall, at all reasonable times, be open to the inspection of stockholders.

Charlton Code, sec. 16, p. 91.

Capital-stock changes.

SEC. 814. Any corporation created under this chapter may, subject to the provisions of the same, increase or diminish its capital stock to any amount within the limits fixed by the articles or amended articles of incorporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts or liabilities shall exceed the sum to which the capital stock is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of capital stock.

Charlton Code, sec. 17, p. 91.

Action of stockholders to change capital stock.

SEC. 815. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the directors and published weekly at least eight consecutive weeks in some newspaper of general circulation published at or nearest the principal place of business of the corporation in the district of Alaska, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to raise or diminish the capital stock; and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of capital stock.

If at any meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital stock a certificate of the proceedings, showing a compliance with these provisions, the amount of the capital stock actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished shall be made out, signed, and verified by the affidavit of the presiding officer and secretary of the meeting, certified to by a majority of the directors, and filed and recorded as articles of incorporation are required to be filed and recorded by section seven hundred and ninety-nine of this chapter.

Charlton Code, sec. 18, p. 92.

Amendments to charter.

SEC. 816. In like manner as provided in the preceding sections, and upon such additional notice as may be provided in the articles of incorporation or by-laws, any of the general provisions of the articles of incorporation may be amended and upon like vote, unless

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a different vote be required in the articles of incorporation; but such amended articles must be filed and recorded as prescribed in section seven hundred and ninety-nine of this chapter.

Charlton Code, sec. 19, p. 92.

Annual list of officers to be filed.

SEC. 817. Every corporation of the District of Alaska shall, on or before the first day of September of each year, file in the office of the clerk of the district court of the recording division where its principal office is located a list containing the names of its principal officers, including the officers mentioned in subdivision one of section eight hundred and seventy-eight of the Code of Civil Procedure for the District of Alaska, and whenever any such officers are changed or substituted shall, within thirty days after such change or substitution, file a notice thereof in like manner with such clerk.

Vol. 31, p. 339.

Charlton Code, sec. 20, p. 92.

Dissolution.

SEC. 818. Any corporation organized under this chapter, when no other mode is specially provided, may, when its debts and liabilities are duly paid or secured, dissolve by a written resolution to that effect, at a meeting of the stockholders specially called for that purpose, by a vote of the owners of at least two-thirds of the stock of the corporation. One copy of such resolution, together with a certificate thereto attached signed by the president and secretary, or, if none, the corresponding officers, and sealed with the corporate seal, stating the facts that all the debts and liabilities of the corporation have been duly paid or secured, and the fact and date of the adoption of such resolution, and that the same is a true copy of the original, the whole number of shares of stock, the shares of stock whose owners voted for its adoption, shall be filed and recorded as articles of incorporation are required to be filed and recorded under section seven hundred and ninety-nine of this chapter. Thereupon the corporation shall cease to exist except for the winding up of its affairs.

Charlton Code, sec. 21, p. 92.
Pearce *v.* Sutherland (164 Fed. Rep., 609; 90 C. C. A., 519).

Continuance for closing affairs, etc.

SEC. 819. All corporations whose terms of existence shall expire by their own limitations, or which shall be voluntarily dissolved in the manner provided in the preceding section, or which shall be dissolved by the judgment of court, shall nevertheless continue to be bodies corporate for three years thereafter for the purpose of prosecuting and defending actions, and for enabling them to settle up and close their business, pay their debts, dispose of and convey their property, and divide their assets, but for no other purpose; and when any corporation shall be so dissolved, the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they shall be known, shall, subject to the power of any court of competent jurisdiction to make in any case a different provision, continue to act as such during said term, and shall be deemed the legal administrators of such corporation, with full power to settle its affairs, pay its debts, sell or dispose of, or convey all of its property, both real and personal, collect the outstanding debts, and, after paying the debts due and owing by such corporation at the time of its dissolution and the costs of such administration, divide the residue of the money and other property among the stockholders thereof.

Charlton Code, sec. 22, pp. 92-93.
Decker Bros. *v.* Berner's Bay Mining Co. (3 Alaska Rep., 280).

Annual statement to be published.

SEC. 820. The president, secretary, and treasurer of any corporation organized under the provisions of this chapter shall annually, under their signatures and oaths, make out and publish weekly, for three successive weeks, in a newspaper of general circulation in the District of Alaska, a joint statement showing: First, the number of

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shares of capital stock outstanding; second, the amount paid in on each share of stock; third, the actual paid-up capital of the corporation; fourth, the actual cash value of the property of the corporation and the character, location, and nature of the same; fifth, the debts and liabilities of the corporation, and for what the same were incurred and whether the same are secured or unsecured and the amount of each kind, and, if secured, the character and kind of security; sixth, the salaries severally paid each and every officer, manager, and superintendent of the corporation during the preceding year; and, seventh, the increase or decrease, if any, of the stock, the capital, and the liabilities of the corporation during the preceding year.

Charlton Code, sec. 23, p. 93.

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## CHAPTER THIRTY-EIGHT.

### OF THE PRACTICE OF MEDICINE AND SURGERY.


Sec.
821. Medicine and surgery; license for practice of.
822. Requirements.
823. Applications.
824. License to resident practitioners; requirements.
825. Recording license, etc.
826. Prima facie evidence of practice; emergency cases; commissioned medical officers, etc.
827. Recording license, etc.; fee.
828. Penalty for violation.
829. Disposition of funds.


Feb. 6, 1909.
35 Stat. L., 603–605.

Medicine and surgery. License for practice of. Requirements.

SEC. 821. It shall be unlawful for any person to practice medicine or surgery, or any of the departments thereof, within the Territory of Alaska, until he or she shall have first obtained a license therefor as hereinafter in this act prescribed.

SEC. 822. No person shall receive a license to practice medicine or surgery, or any of the departments thereof, within the Territory of Alaska until he or she shall have, first, submitted a diploma issued by some legally chartered medical school authorizing the holder thereof to practice medicine or surgery, the requirements for graduation of which medical school shall have been at the time of granting said diploma in no particular less than those prescribed by the Association of American Medical Colleges for that year, or, second, submitted proof of having practiced medicine or surgery, or both, for a period of not less than three successive years, continuously prior to the passage of this act and within the jurisdiction of one of the judicial districts of Alaska.

Applications.

SEC. 823. Any person desiring to obtain a license to practice medicine or surgery within the Territory of Alaska shall first make application therefor to the clerk of the court of the district in which he desires to practice. The application shall be in writing, and shall state the name of the applicant, his age, his residence, the name and location of the college whence his diploma issued, the length of time, if at all, he has practiced medicine, and where, giving specifically the names of places wherein he has so practiced medicine. The application shall be accompanied by the diploma of the applicant, or duly authenticated copy, as must also an affidavit setting forth that he or she is the person therein named, and that the diploma was procured in the regular manner after the regular course of study prescribed by the medical school granting the same, without fraud or misrepresentation.

License to resident practitioners.

SEC. 824. Any applicant for license to practice medicine or surgery within the Territory of Alaska, not in possession of the credentials specified in section eight hundred and twenty-three of this act, may obtain a license at the discretion of the clerk of the district court



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to whom he applies upon furnishing a properly attested statement, to wit: That he or she is a bona fide resident of Alaska, and has been engaged in the practice of medicine exclusively within the Territory of Alaska for a period of not less than three successive years immediately prior to the passage of this act. The application shall be accompanied by the written recommendation of three bona fide residents of the judicial district wherein the applicant desires to practice, one of whom must be a physician holding a license under section eight hundred and twenty-three of this act, and shall state in a general way applicant's character and professional ability.

Requirements.

Recording licenses, etc.

SEC. 825. Every person receiving a license to practice medicine or surgery within the Territory of Alaska shall have such license recorded in the office of the clerk of the court of the district wherein he is practicing, or proposes to practice, within thirty days from date of issuance. And when such licentiate moves into another district for the purpose of continuing the practice of medicine, he shall first file for record with the clerk of the court of the district to which he moves a certified copy of the license.

Prima facie evidence of practice.

SEC. 826. Any person shall be regarded as practicing medicine within the meaning of this act who shall within the Territory of Alaska append the letters M. D. to his name, or who shall prescribe or administer or make known his ability or willingness to prescribe or administer drugs, medicines, electricity, magnetism, hydrotherapy, or perform any operation or manipulation, or apply any apparatus or appliance for the cure, alleviation, correction, or reduction of any human disease, ill, deformity, defect, wound, or injury, including midwifery for hire, fee, compensation, or reward, promised, offered, or accepted, directly or indirectly. The doing of any of the acts of this section above mentioned shall be taken to be prima facie evidence on the part of the person so doing to represent himself or herself as engaged in the practice of medicine or surgery, or both. But nothing in this act shall be so construed as to inhibit service in case of emergency, medical or surgical relief of natives of Alaska by employees of the Bureau of Education, or to the domestic administration of family remedies, nor to legally qualified dentists when engaged exclusively in the practice of dentistry. Nor shall this act apply to any commissioned medical officer in the United States Army or Marine-Hospital Service or Bureau of Education in the discharge of his professional duties, or to any ship's doctor attached to any vessel plying or operating in Alaska.

Emergency cases.

Commissioned medical officers, etc.

Recording licenses, etc.

Sec. 827. Applications for license to practice medicine within the Territory of Alaska shall be recorded by the clerk of the district court in which they are presented within five days of date of presentation. Said record shall specify under which section of this act the license be issued, if issued, and the date thereof. The record containing said applications shall be accessible to the public during office hours of the clerk of the court for inspection. A fee of ten dollars shall accompany each application for license.

Fee.

Penalty for violation.

SEC. 828. Every person who shall practice, or shall attempt to practice medicine within the meaning of this act without having first obtained a license therefor as prescribed in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty nor more than one hundred days, or by both fine and imprisonment, and each day of such practice shall constitute a distinct and separate offense.

Disposition of funds.

SEC. 829. All moneys collected from licenses or fines under this act shall be disposed of in the manner already provided for by law applicable to the Territory of Alaska.

NOTE.—See title VIII Alaska fund.

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# CHAPTER THIRTY-NINE.

## CARE AND CUSTODY OF THE INSANE.

Sec.
830. Insane persons, bids for care of, etc.; "Alaska fund," use of, for care, etc., of insane, repealed; to be used for school purposes.
NOTE.—See note for previous acts and amendments thereto, and for appropriations.
831. Commitment and care of insane; procedure; trial by jury; attorney for defendant; examination by physician; witnesses; verdict; issue of warrant, etc.; compensation for service of process, etc.; audit of expense account.
832. Temporary detention hospitals for insane; authorized at Fairbanks and Nome; appropriation.
832a. Board on construction; contracts, etc.; expenditures, report, etc.; care and maintenance.

Feb. 6, 1909.
35 Stat. L., 601.
Insane persons. Bids for care, etc., of.

SEC. 830. The Secretary of the Interior shall hereafter, as in his judgment may be deemed advisable, advertise for and receive bids for the care and custody of persons legally adjudged insane in the District of Alaska, and in behalf of the United States shall contract, for one or more years, as he may deem best, with a responsible asylum or sanitarium west of the main range of the Rocky Mountains submitting the lowest and best responsible bid for the care and custody of persons legally adjudged insane in said District of Alaska, the cost of advertising for bids, executing the contract, and caring for the insane to be paid from appropriations to be made for such service upon estimates to be submitted to Congress annually. So much of the act approved January twenty-seventh, nineteen hundred and five, entitled "An act to provide for the construction and maintenance of roads, establishment and maintenance of schools, and care and support of insane persons in the District of Alaska, and for other purposes," as provides that five per centum of the license moneys collected outside of incorporated towns in the District of Alaska shall be devoted to the care and maintenance of such insane persons is hereby repealed, and such five per centum, or so much thereof as may be necessary, shall hereafter be applied to and used for the establishment and maintenance of public schools in said District, under the supervision of the governor.

"Alaska fund." Use of, for care, etc., of insane, repealed.
Vol. 33, p. 616, amended.

To be used for school purposes.

Amends Political Code, sec. 2; Charlton's Political Code, sec. 5973.

NOTE.—The act of June 6, 1900 (31 Stat. L., 321), provided that the governor, subject to the direction and approval of the Secretary of the Interior, shall advertise, etc., for the care of insane persons.

This act was amended by act of Apr. 28, 1904 (33 Stat. L., 526), and finally amended by act of Feb. 6, 1909 (35 Stat. L., 601), being the foregoing section.

By act of Jan. 27, 1905 (33 Stat. L., 616), 5 per cent was set aside for the care of the insane, which act was amended by act of May 14, 1906 (34 Stat. L., 192), and finally repealed by act of Feb. 6, 1909 (35 Stat. L., 601), being the foregoing section.

The following appropriations were made by Congress for the care of the insane in Alaska:

| Act of— | Stat. L. | Amount. | Act of— | Stat. L. | Amount. |
|---|---|---|---|---|---|
| Mar. 3, 1905 | 33, 1170 | (1) | May 27, 1908 | 35, 350 | $28,000 |
| Do | 33, 1189 | $17,232 | Mar. 4, 1909 | 35, 924 | 22,000 |
| June 12, 1906 | 34, 254 | [2] 150,000 | Do | 35, 989 | 50,000 |
| June 30, 1906 | 34, 731 | 23,000 | June 25, 1910 | 36, 744 | 50,000 |
| Mar. 4, 1907 | 34, 1388 | 23,000 | Mar. 4, 1911 | 36, 1420 | 50,000 |

[1] 5 per cent of "Alaska fund."
[2] To be expended conformably to act of Jan. 27, 1905.

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Jan. 27, 1905.
33 Stat. L., 619-620.
Insane persons. Commitment and care of.

SEC. 831. Commissioners appointed by the judges of the district court in the District of Alaska, pursuant to existing laws, shall, as ex officio probate judges and in the exercise of their probate jurisdiction, have the power, and it shall be their duty, in their respective districts, to commit, by warrant under their hands and seals, all persons adjudged insane in their districts to the asylum or sanitarium provided for the care and keeping of the insane of the District of Alaska. No person shall be adjudged insane or committed as such, except upon and pursuant to the following proceedings, to wit: Whenever compiaint in writing is made by any adult person to a commissioner that there is an insane person at large in the commissioner's district, the commissioner shall at once cause such insane person to be taken into custody and to be brought before him, and he shall then immediately summon and impanel a jury of six male adults, residents of the district, to inquire, try, and determine whether the person so complained of is really insane. The members of said jury shall, before entering upon the discharge of their duty, each take an oath to diligently inquire, justly try, and a true verdict render, touching the mental condition of the person charged with being insane. Before entering upon such trial the commissioner shall appoint some suitable person to appear for and represent in the proceeding the person complained of as insane. And in case there is a physician or surgeon in the vicinity who can be procured, the commissioner shall cause such surgeon or physician to examine the person alleged to be insane, and after such examination to testify under oath before the jury in respect to the mental condition of said person. The commissioner shall preside at said hearing and trial. All witnesses that may be offered shall be heard and shall be permitted to testify under oath in said matter, and after having heard all the evidence the said jury shall retire to agree upon a verdict, and if the jury unanimously, by their verdict in writing, find that the said person so charged with being insane as aforesaid is really and truly insane and that he ought to be committed to the asylum or sanitarium aforesaid, and the commissioner approves such finding, he shall enter a judgment adjudging the said person to be insane and adjudging that he be at once conveyed to and thereafter properly and safely kept in the said asylum or sanitarium until duly discharged therefrom by law. The commissioner shall thereupon, under his hand and seal, issue his warrant, with a copy of said judgment attached, for the commitment of said insane person to the asylum or sanitarium aforesaid, which warrant shall be delivered to the marshal of the division in which said proceedings are had, and shall direct said marshal to safely keep and deliver said insane person to said asylum or sanitarium, and the said marshal, for the service of process in connection with and the guarding and transportation of the insane, shall be compensated from the same source and in the same manner as in the case of prisoners convicted of crime. The commissioner, the jurymen, and the witnesses in said proceeding shall be entitled to the same compensation and mileage as in civil actions. And all the compensation, mileage, fees, and all other expenses and outlays incident to said proceedings shall be audited and allowed by the district judge of the division in which said proceedings are pending and had, and when so audited and allowed shall be paid by the clerk of the court in such division as the incidental expenses of the court are by him paid and from the same fund.

Procedure. Trial by jury. Attorney for defendant. Examination by physician. Witnesses. Verdict. Issue of warrant, etc. Compensation for service of process, etc. Audit of expense account.

Charlton Political Code, secs. 5974, 5975, 5976.

June 25, 1910.
36 Stat. L., 852.
Temporary detention hospitals for insane.

SEC. 832. There is hereby established at Fairbanks, in the Territory of Alaska, and at Nome, in the Territory of Alaska, respectively, a detention hospital for the temporary care and detention of the

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insane, wherein all insane and other patients in charge of the United States marshal shall be detained until transported to the asylum provided by law for their permanent care and cure, or otherwise disposed of as provided by the laws of the United States; and the sum of twenty-five thousand dollars is hereby appropriated out of any moneys in the United States Treasury not otherwise appropriated, not exceeding one-half thereof to be expended in the erection and equipment of the hospital at Fairbanks and not exceeding one-half thereof to be expended in the erection and equipment of the hospital at Nome.

Authorized at Fairbanks and Nome.
Appropriation.

SEC. 832*a*. That the governor of Alaska and the judge of the district court and the United States marshal of the judicial division in which the said detention hospital, respectively, is to be erected and equipped, shall constitute in each division a board whose duty it shall be to cause the said detention hospital to be erected and equipped; that public bids for the erection of the same shall be called for, and the said board shall let the contract for the erection of the buildings, respectively, to the lowest and best bidder, but the said board may reject any or all bids and call for new bids in their discretion; that the moneys hereby appropriated, or so much thereof as shall be necessary, shall be expended by the said board upon the approval of the governor; and the said board in each division shall make a detailed report of the expenditures of the said funds to the Attorney General of the United States; that the said hospitals, after their erection and equipment, shall be under the charge and control of the United States marshal in the division where situated, and the maintenance thereof shall be paid in the same manner and from the same fund as the expense of the United States jails under the same marshal is paid.

Board on construction.
Contracts, etc.
Expenditures, report, etc.
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# CHAPTER ONE.

## OF THE FORMS OF ACTION.


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| 833. | Only one form of action. | 834. | Parties thereto, how designated. |


June 6, 1900.

31 Stat. L., 333–334. R. S., 2d Supp., 1206.

Only one form of action.

SEC. 833. The distinction between actions at law and suits in equity, and the forms of all such actions and suits, are abolished, and there shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which is denominated a civil action.

Carter Code, sec. 1; Charlton Code, sec. 1.

Thompson *v.* Burke (2 Alaska Rep., 255). First Nat. Bank *v.* Fish (2 Alaska Rep., 349). Pac. Coast Co. *v.* Brown (2 Alaska Rep., 622). Fulkerson *v.* Chisna Min. & Imp. Co. (122 Fed. Rep., 782; 58 C. C. A., 582). Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424). Madden *v.* McKenzie (144 Fed. Rep., 64; 75 C. C. A., 222). Waskey *v.* McNaught (163 Fed. Rep., 928). Ming Yue *v.* Coos Bay R. Co. (33 Pac. Rep., 641). Beacannon *v.* Liebe (5 Pac. Rep., 273). Burrage *v.* Bonanza Min. Co. (6 Pac. Rep., 766). Weber *v.* Rothchild (15 Pac. 650). Aiken *v.* Aiken (6 Pac. Rep., 684). Thompson *v.* Nibbs (76 Pac. Rep., 778).

Parties thereto, how designated.

SEC. 834. In such actions the party complaining shall be known as the plaintiff and the adverse party as the defendant.

Carter Code, sec. 2; Charlton Code, sec. 2.

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# CHAPTER TWO.

## OF THE TIME OF COMMENCEMENT OF CIVIL ACTIONS.

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836. Within ten years.
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850. In actions by aliens time of war to be deducted.
851. Time of stay by injunction or statutory prohibition to be deducted.
852. Disability must exist when right of action accrued.
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854. Acknowledgment or new promise must be in writing.
855. Limitation to commence from time of last payment.
856. Nonresidents; cause of action when barred.

June 6, 1900.

31 Stat. L., 334–336.
R. S., 2d Supp., pp. 1207–1209.

Time of commencing actions in general.

SEC. 835. Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer, except as otherwise provided in section eight hundred and ninety.

Carter Code, sec. 3; Charlton Code, sec. 3.

McGrath *v.* Valentine (167 Fed. Rep., p. 473; 93 C. C. A., p. 109). Lewis *v.* Johnson (1 Alaska Rep., 529). Van Schuyder *v.* Hartman (1 Alaska Rep., 431). Murray *v.* Farrell (2 Alaska Rep., 360). Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 439; 136 Fed. Rep., 124; 69 C. C. A., 548). Bakke *v.* Latimer (3 Alaska Rep., 99). Myer *v.* Beal (5 Or. Rep., 130). Goodwin *v.* Morris (9 Or. Rep., 322). Steamer Senorita *v.* Simonds (1 Or. Rep., 274). Spauer *v.* McBee (23 Pac. Rep., 818). Hawkins *v.* Donnerberg (66 Pac. Rep., 691). Baldo *v.* Tolmie (1 Or. Rep., 177). Pitman *v.* Bunt (5 Or. Rep., 17). Anderson *v.* Baxter (4 Or. Rep., 105). Hyde *v.* Holland (22 Pac. Rep., 1104). Miser *v.* O'Shea (62 Pac. Rep., 491). Scott *v.* Christenson (80 Pac. Rep., 731). Ausplund *v.* Aetna Indemnity Co. (81 Pac. Rep., 577). McKinnon *v.* Higgins (81 Pac. Rep., 581). Gilman *v.* Cochran (90 Pac. Rep., 1001). State *v.* Warner Valley St. Co. (108 Pac. Rep., 861).

NOTE.—For limitation of equitable actions see sec. 1193, chap, 38, of this title.

Within ten years.

SEC. 836. The periods prescribed in section eight hundred and thirty-five of this act for the commencement of actions shall be as follows:

Within ten years actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within ten years before the commencement of the action: *Provided*, In all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within one year from the approval of this act, an action may be brought on such cause of action within one year from the date of the approval of the act.

Carter Code, sec. 4; Charlton Code, sec. 4.

The Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 439, 454, 459). Tyee Consol. Min. Co. *v.* Langstedt (121 Fed. Rep., 709; 58 C. C. A., 129). Tyee Consol. Min. Co. *v.* Langstedt (136 Fed. Rep., 124; 69 C. C. A., 548). Tyee Consol. Min. Co. *v.* Jennings (137 Fed. Rep., 863; 70 C. C. A., 393).

NOTE.—As to when title conclusively presumed except as against U. S. see section eighteen hundred and seventy-four, chapter one hundred, of this title.

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*Adverse possession*: Shuffleton *v.* Nelson (2 Saw. Rep., 540). Stark *v.* Starr (1 Saw. Rep., 23). Ambrose *v.* Huntington (56 Pac. Rep., 513). Hicklin *v.* McClear (22 Pac. Rep., 1057). Beale *v.* Hite (57 Pac. Rep., 322). Altshul *v.* O'Neal (58 Pac. Rep., 95). Adams *v.* Burke (3 Saw. Rep., 415). Swift *v.* Mulkey (21 Pac. Rep., 871. Real Estate Co. *v.* Hendirks (42 Pac. Rep., 514). Morrison *v.* Holliday (39 Pac. Rep., 1100). Mitchell *v.* Kendall (24 Pac. Rep., 455). Low *v.* Schaffer (33 Pac. Rep., 678). Vance *v.* Wood (29 Pac. Rep., 73). Rowland *v.* Williams (32 Pac. Rep., 402). Wheeler *v.* Taylor (52 Pac. Rep., 183). Clark *v.* Bundy (44 Pac. Rep., 282). Joy *v.* Stump (12 Pac. Rep., 929). Anderson *v.* McCormick (22 Pac. Rep., 1062). Wilson *v.* McEwan (7 Or. Rep., 87). Zellin *v.* Rogers (21 Fed. Rep., 103). Slater *v.* Reed (60 Pac. Rep., 709). Hyde *v.* Holland (22 Pac. Rep., 1104). Bayard *v.* Std. Oil Co. (63 Pac. Rep., 614). Montgomery *v.* Shaver (66 Pac. Rep., 40). Hamilton *v.* Flournoy (74 Pac. Rep., 483). West *v.* Edwards (69 Pac. Rep., 992). Oregon City *v.* Oregon C. R. Co. (74 Pac. Rep., 924). Gist *v.* Doke (70 Pac. Rep., 704). Katz *v.* Obenchain (85 Pac. Rep., 617).

*Color of title*: Shuffleton *v.* Nelson (2 Saw. Rep., 540). Swift *v.* Mulkey (12 Pac. Rep., 76; 21 Pac. Rep., 871). Joy *v.* Stump (12 Pac. Rep., 929). Zellin *v.* Rogers (21 Fed. Rep., 103). Smith *v.* Shattuck (7 Pac. Rep., 335). Nosler *v.* Coos B. R. & Nav. Co. (64 Pac. Rep., 645. Bayard *v.* Std. Oil Co. (63 Pac. Rep., 614). Hamilton *v.* Flournoy (74 Pac. Rep., 483). Grant *v.* O. R. & N. Co. (90 Pac. Rep., 178).

*Recognition of title in another*: Lawrence *v.* Lawrence (12 Pac. Rep., 186). Kanne *v.* Otty (36 Pac. Rep., 537). Rowland *v.* Wiliams (32 Pac. Rep., 402). Coventon *v.* Seufert (32 Pac. Rep., 508). Altschul *v.* O'Neil (58 Pac. Rep., 95). Beale *v.* Hite (57 Pac. Rep., 322; 58 Pac. Rep., 102). Fellows *v.* Evans (52 Pac. Rep., 491).

*Trust property*: Manaudas *v.* Mann (30 Pac. Rep., 422). Raymond *v.* Flavel (40 Pac. Rep., 158). Snyder *v.* Johnson (35 Pac. Rep., 846). Springer *v.* Young (12 Pac. Rep., 400). Westenfelder *v.* Green (34 Pac. Rep., 23). Northrop *v.* Marquam (18 Pac. Rep., 449). Wheeler *v.* Taylor (52 Pac. Rep., 183).

*Entry under license of permission*: Nessly *v.* Ladd (45 Pac. Rep., 904). Curtis *v.* La Grande Wat. Co. (23 Pac. Rep., 808). Abraham *v.* Owens (26 Pac. Rep., 1102). Springer *v.* Young (12 Pac. Rep., 400). Anderson *v.* McCormick (22 Pac. Rep., 1062). Ambrose *v.* Huntington (56 Pac. Rep., 513).

*Husband and wife*: Springer *v.* Young (12 Pac. Rep., 400).

*Entry under mistake as to boundaries*: Canfield *v.* Clark (21 Pac. Rep., 443). Ramsey *v.* Ogden (31 Pac. Rep., 778). Rowland *v.* Williams (32 Pac. Rep., 402). King *v.* Brigham (25 Pac. Rep., 150; 31 Pac. Rep., 601). Pierson *v.* Dryden (43 Pac. Rep., 166).

*Remainder limited on live estate*: Stubblefield *v.* Menzies (8 Saw. Rep., 41).

*Burden of proving*: Shuffleton *v.* Nelson (2 Saw. Rep., 540). Altschul *v.* Casey (76 Pac. Rep., 1083).

*Title created by adverse possession*: Mitchell *v.* Campbell (24 Pac. Rep., 455). Parker *v.* Metzger (7 Pac. Rep., 518). Myer *v.* Beal (5 Or. Rep., 130). Goodwin *v.* Morris (9 Or. Rep., 322). Joy *v.* Stump (12 Pac. Rep., 929).

*Suspension of the statute*: Burrell *v.* Guarantee Co. (39 Pac. Rep., 992). Clark *v.* Bundy (44 Pac. Rep., 282).

*Water rights*: Wimer *v.* Simmons (39 Pac. Rep., 6). Dodge *v.* Marden (7 Or. Rep., 458). North Powder Co. *v.* Coughanour (54 Pac. Rep., 223). Gardner *v.* Wright (91 Pac. Rep., 286).

*Pleading the statute*: Zellin *v.* Rogers (10 Saw., 200; 21 Fed. Rep., 103).

*Limitations in equity suits affecting real property*: Meier *v.* Kelly (29 Pac. Rep., 265).

*Limitations affecting real property of married women*: Stubblefield *v.* Menzies (8 Saw. Rep., 41; 11 Fed. Rep., 286). Mitchell *v.* Campbell (24 Pac. Rep., 455). Morrison *v.* Holliday (39 Pac. Rep., 1100). Wilson *v.* Wilson (69 Pac. Rep., 923).

Within ten years.

SEC. 837. Within ten years—

First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

Second. An action upon a sealed instrument.

Carter Code, sec. 5; Charlton Code, sec. 5.

Murray *v.* Farrell (2 Alaska Rep., 361).

*Actions upon judgments*: Trenought *v.* Farrington (54 Calif. Rep., 673). Parke *v.* Williams (7 Calif. Rep., 247). Mason *v.* Conise (20 Calif. Rep., 211). Stought *v.* Macy (22 Calif. Rep., 647). De Euprey *v.* De Euprey (23 Calif. Rep., 352). Bowers *v.* Crary (30 Calif. Rep., 621). Chapin *v.* Broder (16 Calif. Rep., 403). Feeney *v.* Hinkley (66 Pac. Rep., 580).

*Actions upon sealed instruments*: Myer *v.* Beal (5 Or. Rep., 130). Eubanks *v.* Levridge (4 Saw. Rep., 274). Anderson *v.* Baxter (4 Or. Rep., 110). Allen *v.* O'Donnell (28 Fed. Rep., 348). Scott *v.* Cristenson (80 Pac. Rep., 731; 89 Pac. Rep., 376). Kaiser *v.* Idelman (108 Pac. Rep., 193).

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SEC. 838. Within six years—

Within six years.

First. An action upon a contract or liability, express or implied, excepting those mentioned in section eight hundred and thirty-seven.

Second. An action upon a liability created by statute, other than a penalty or forfeiture;

Third. An action for waste or trespass upon real property;

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof.

Carter Code, sec. 6; Charlton Code, sec. 6.

Murray *v.* Farrell (2 Alaska Rep., 361, 362). Durbin *v.* Kennedy (23 Pac. Rep., 661). McDonald *v.* Holmes (29 Pac. Rep., 735). Hickox *v.* Elliott (22 Fed. Rep., 17). Powell *v.* Oregonian R. Co. (38 Fed. Rep., 187). Howe *v.* Taylor (6 Or. Rep., 284). Multnomah County *v.* Kelly (60 Pac. Rep., 202). State *v.* Baker County (33 Pac. Rep., 530). State *v.* Davis (71 Pac. Rep., 68). Leavitt *v.* Shook (83 Pac. Rep., 391). Dutro *v.* Ladd (91 Pac. Rep., 459). Jamieson *v.* Potts (105 Pac. Rep., 98).

*Action for waste*: Powell *v.* Dayton S. & G. R. R. Co. (16 Pac. Rep., 863).

*Actions relating to personalty*: Sheppard *v.* Yocum (10 Or. Rep., 408). Kelsey *v.* Griswold (6 Or. Rep., 456).

*Action upon liability created by statute*: Bergman *v.* Inman, Poulsen Co. (72 Pac. Rep., 1066; 73 Pac. Rep., 341).

SEC. 839. Within three years—

Within three years.

First. An action against a marshal, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall not apply to an action for an escape;

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except where the statute imposing it prescribes a different limitation.

Carter Code, sec. 7; Charlton Code, sec. 7.

Malony *v.* Adsit (175 U. S. Rep., 281).

*Against officers*: Howe *v.* Taylor (6 Or. Rep., 293). Multnomah County *v.* Kelly (60 Pac. Rep., 202).

SEC. 840. Within two years—

Within two years.

First. An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein especially enumerated;

Second. An action upon a statute for a forfeiture or penalty to the United States.

Carter Code, sec. 8; Charlton Code, sec. 8.

Conroy *v.* Or. Const. Co. (23 Fed. Rep., 812). Rep., 73). Smith *v.* Day (64 Pac.

SEC. 841. Within one year—

Within one year.

An action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process.

Carter Code, sec. 9; Charlton Code, sec. 9.

SEC. 842. An action upon the statute for the penalty given in whole or in part to the person who will prosecute for the same shall be commenced within one year after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the United States, by the district attorney.

Actions for penalty.

Carter Code, sec. 10; Charlton Code, sec. 10.

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Actions not before provided for.

SEC. 843. An action for any cause not hereinbefore provided for shall be commenced within ten years after the cause of action shall have accrued.

Carter Code, sec. 11; Charlton Code, sec. 11.

NOTE.—As to time of beginning by administrator, etc., see sec. 1185, chap. 37, of this title.

As to time of beginning actions against administrator, etc., see sec. 1190, chap. 37, of this title.

As to foreign wills see sec. 578, chap. 15, Civil Code.

When cause of action accrues upon current account.

SEC. 844. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

Carter Code, sec. 12; Charlton Code, sec. 12.

Limitations in actions by public corporations.

SEC. 845. The limitations prescribed in this chapter shall apply to actions brought in the name of any public corporation in the district, or for its benefit, in the same manner as to actions by private parties.

Carter Code, sec. 13; Charlton Code, sec. 13.

State *v.* Baker County (33 Pac. Rep., 530). Snyder *v* Hutchinson (57 Pac. Rep., 324). Ambrose *v* Huntington (56 Pac. Rep., 513). State *v.* Portland Gen. Elec. Co. 95 Pac. Rep., 722). State *v.* Warner Valley Stock Co. (108 Pac. Rep., 861).

When action deemed commenced.

SEC. 846. An action shall be deemed commenced when the complaint is filed and the summons issued.

Carter Code, sec. 14; Charlton Code, sec. 14.

Hawkins *v.* Donnerberg (66 Pac. Rep., 908). Dunn *v.* Portland .St. R. Co. (65 Pac. Rep., 1052). Paterson *v.* Thompson (90 Fed. Rep., 647). Burns *v.* White Swan Min Co. (57 Pac. Rep., 637). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Coggan *v* Reeves (3 Or. Rep., 275). Fisher *v.* Kelly (46 Pac. Rep., 146). Dutro *v.* Ladd (91 Pac. Rep., 459).

NOTE.—See sec. 874, chap. 4 of this title.

Exceptions when defendant out of the district.

SEC. 847. If, when the cause of action shall accrue against any person who shall be out of the district or concealed therein, such action may be commenced within the terms herein respectively limited, after the return of such person into the district or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this district, or concealed himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Carter Code, sec. 15; Charlton Code, sec. 15.

Murray *v.* Farrell (2 Alaska Rep., 361). Van Schuyver *v.* Hartman (1 Alaska Rep., 431).

*Nonresidents*: McCormick *v.* Blanchard (7 Or. Rep., 232). Crane *v.* Jones (33 Pac. Rep., 869). Van Santvoord *v.* Roethler (57 Pac. Rep., 628). Rhoten *v.* Mandenhall (20 Pac. Rep., 49). Jameison *v.* Potts (105 Pac. Rep., 93).

*Conceal*: Rhoten *v.* Mendenhall (20 Pac. Rep., 49).

*Absence of mortgagor*: Anderson *v.* Baxter (4 Or. Rep., 105). Watt *v.* Wright (4 West Coast Rep., 622). Eubanks *v.* Levering (4 Saw. Rep., 275).

*Demands barred by laws of foreign States*: McCormick *v.* Blanchard (17 Or. Rep., 232).

Exceptions in favor of persons under legal disability.

SEC. 848. If any person entitled to bring an action mentioned in this chapter, or to recover real property, or for a penalty or for-

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feiture, or against a marshal or other officer for an escape, be at the time the cause of action accrued, either—

First. Within the age of twenty-one years; or

Second. Insane; or

Third. Imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life.

The time of such disability shall not be a part of the time limited for the commencement of the action, but the period within which the action shall be brought shall not be extended in any case longer than two years after such disability ceases.

Carter Code, sec. 16; Charlton Code, sec. 16.
*Infancy*: Northrop *v.* Marquan (18 Pac. Rep., 449).

Provisions when person entitled dies before time expires.

SEC. 849. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his personal representatives, after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within six months after the issuing of letters testamentary or of administration.

Carter Code, sec. 17; Charlton Code, sec. 17.
Blaskower *v.* Steel (31 Pac. Rep., 252).

NOTE.—As to when action not to abate see sec. 867, chap. 3, and sec. 1185, chap. 37, of this title.

In actions by aliens time of war to be deducted.

SEC. 850. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Carter Code, sec. 18; Charlton Code, sec. 18.
Smith *v.* Charter Oak Ins. Co. (64 Mo. Rep., 330). Chappelle *v.* Olney (1 Saw. Rep., 401).

Time of stay by injunction or statutory prohibition to be deducted.

SEC. 851. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Carter Code, sec. 19; Charlton Code, sec. 19.
Blaskower *v.* Steel (31 Pac. Rep., 252). Clark *v.* Bundy (44 Pac. Rep., 282). In re Morgan's Estate (77 Pac. Rep., 608).

Disability must exist when right of action accrued.

SEC. 852. No person shall avail himself of a disability unless it existed when his right of action accrued.

Carter Code, sec. 20; Charlton Code, sec. 20.
Fritz *v.* Joiner (54 Ill. Rep., 101). Rogers *v.* Brown (61 Mo. Rep., 187). Swearingen *v.* Robertson (39 Wis. Rep., 402).

When several disabilities, limitation does not attach until all removed.

SEC. 853. When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until all such disabilities are removed.

Carter Code, sec. 21; Charlton Code, sec. 21.
Crowter *v.* Rowlandson (27 Calif. Rep., 384).

Acknowledgment or new promise must be in writing.

SEC. 854. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some

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writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Carter Code, sec. 22; Charlton Code, sec. 22.

*Promise of creditor to extend time*: Green *v.* Coos Bay W. R. Co. (10 Saw. Rep., 625). Anderson *v.* Baxter (4 Or. Rep., 105).

*To and by whom to be made*: Partlow *v.* Singer (2 Or. Rep., 307). Sutherlin *v.* Roberts (4 Or. Rep., 378). Torrence *v.* Strong (4 Or. Rep., 39). Harding *v.* Grinn (36 Pac. Rep., 634). Dundee Inv. Co. *v.* Horner (48 Pac. Rep., 175). Sheak *v.* Wilbur (86 Pac. Rep., 375). Kaiser v. Idleman (108 Pac. Rep., 193).

Limitation to commence from time of last payment.

SEC. 855. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Carter Code, sec. 23; Charlton Code, sec. 23.

Creighton *v.* Vincent (10 Or. Rep., 56). Partlow *v.* Singer (2 Or. Rep., 308). Blaskower *v.* Steel (31 Pac. Rep., 252). Dundee Inv. Co. *v.* Horner (48 Pac. Rep., 175). Sutherlin *v.* Roberts (4 Or. Rep., 378). Torrence *v.* Strong (4 Or. Rep., 39). Allen *v.* O'Donnell (28 Fed. Rep., 346; 141 U. S. Rep., 534). In re Smith's will (75 Pac. Rep., 133). Sheak *v.* Wilbur (86 Pac. Rep., 375). Gilman *v.* Cochran (90 Pac. Rep., 1001). Kaiser *v.* Idleman (108 Pac. Rep., 193).

Nonresidents cause of action when barred.

SEC. 856. When the cause of action has arisen in any State, Territory, or country between nonresidents of this district, and by the laws of the State, Territory, or country where the cause of action arose an action can not be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this district.

Carter Code, sec. 24; Charlton Code, sec. 24.

Murray *v.* Farrell (2 Alaska Rep., 362). McCormick *v.* Blanchard (7 Or. Rep., 232). Crane *v.* Jones (33 Pac. Rep., 869). Van Santvoord *v.* Roethler (57 Pac. Rep., 628). Crawford *v.* Roberts (8 Or. Rep., 324). Sherman *v.* Osborne (8 Or. Rep., 66). Bulger *v.* Roach (22 Am. Dec., 362). In re Smith's Will (75 Pac. Rep., 133).

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# CHAPTER THREE.

## OF THE PARTIES TO ACTIONS.


Sec.
857. Action to be prosecuted in the name of the real party in interest.
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31 Stat. L., 336–338.
R. S., 2d Supp., pp. 1209–1211.

Action to be prosecuted in the name of the real party in interest.

SEC. 857. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section eight hundred and fifty-nine; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract.

Carter Code, sec. 25; Charlton Code, sec. 25.

Bates *v.* Mayor, etc., of Nome (1 Alaska Rep., 208). Dryden *v.* Sewell (2 Alaska Rep., 184). Willamette Tent & Awning Co. *v.* West coast Grocery Co. (2 Alaska Rep., 4). Williams *v.* Jualpa Co. (3 Alaska Rep., 225). Hinchman *v.* Ripinsky (3 Alaska Rep., 543). Morris *v.* Marsh (3 Alaska Rep., 140). Northern Comm. Co. *v.* Lindblom (162 Fed. Rep., 250; 89 C. C. A., 230). Cascaden *v.* Wimbish (161 Fed. Rep., 241; 88 C. C. A., 277). Elliott *v.* Teal (5 Saw. Rep., 190). Chrisman *v.* State Ins. Co. (18 Pac. Rep., 466). Kimball *v.* Bleick (32 Pac. Rep., 766). Little *v.* City of Portland (37 Pac. Rep., 911). McDaniel *v.* Maxwell (27 Pac. Rep., 952). State Ins. Co. *v.* O. R. & N. Co. (26 Pac. Rep., 838). Home Mutual Ins. Co. *v.* O. R. & N. Co. (26 Pac. Rep., 857). Ruble *v.* Coyote G. & S. M. Co. (10 Or. Rep., 41). Hughes *v.* O. R. & N. Co. (5 Pac. Rep., 206). Strong *v.* Kamm (9 Pac. Rep., 331). Baker *v.* Elgin (8 Pac. Rep., 280). Feldtman *v.* McGuire (55 Pac. Rep., 872). Scheider *v.* White (8 Pac. Rep., 652). Clark *v.* Wiss (9 Pac. Rep., 280). Parker *v* Jeffrey (37 Pac. Rep., 712). Brower Lbr. Co. *v.* Miller (43 Pac. Rep., 659). First Nat. Bnk. *v.* Hovey (55 Pac. Rep., 535). Hanna *v.* Wells (4 Or. Rep., 249). Barbre *v.* Goodale (43 Pac. Rep., 387). Gregoire *v.* Rourke (42 Pac. Rep., 996). Hawkins *v.* Cit. Inv. Co. (64 Pac. Rep., 320). U. S. *v.* McCann (66 Pac. Rep., 274). Fireman's Fund Ins. Co. *v.* O. R. & N. Co. (76 Pac. Rep., 1075). Sturgis *v.* Baker (72 Pac. Rep., 744). First Nat. Bank *v.* McCullough (93 Pac. Rep., 367).

NOTE.—See sec. 1185, chap. 37, of this title, authorizing the representatives of deceased persons to bring action for death. See sec. 1194, chap. 38, this title, for real party in interest in actions of an equitable nature. See sec. 867, chap. 3, as to whom action not to abate.

Assignment of a thing in action not to prejudice defense.

SEC. 858. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

Carter Code, sec. 26; Charlton Code, sec. 26.

Adair *v.* Lennox (16 Pac. Rep., 182). McDonald *v.* McKenzie (14 Pac. Rep., 868). Rayburn *v.* Hurd (25 Pac. Rep., 635). Sturgis *v.* Baker, 72 Pac. Rep., 744). Louis Chang *v.* Stephenson (89 Pac. Rep., 386).

NOTE.—As to pleading judgment of court of special jurisdiction, see sec. 909, chap. 10, of this title.

Executor or trustee may sue without the person beneficially interested.

SEC. 859. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section.

Carter Code, sec. 27; Charlton Code, sec. 27.

Dryden *v.* Sewell (2 Alaska Rep., 182, 184). Williams *v.* Jualpa Co. (3 Alaska Rep., 225).

*Trustees of express trust*: Trustees *v.* Adams (4 Or. Rep., 78). Hexter *v.* Schneider (12 Pac. Rep., 668). U. S. *v.* McCann (66 Pac. Rep., 274). Holladay *v.* Davis (5 Or. Rep., 40). Wright *v.* Conservative Inv. Co. (89 Pac. Rep., 387). Northern Comm. Co. *v.* Lindbloom (162 Fed. Rep., 250).

NOTE.—As to actions of an equitable nature by and against executors and administrators see chap. 44 of this title.

As to one for whose benefit promise is made; agency; persons authorized by statute to sue, see cases cited under sec. 857 ante.



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Married women may prosecute and defend as if unmarried.

SEC. 860. A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right, and she may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried.

Carter Code, sec. 28; Charlton Code, sec. 28.
Decker *v.* Kedly (148 Fed. Rep., 681).

Infant to appear by guardian.

SEC. 861. Actions may be commenced and prosecuted by infants, either by guardian or next friend, and by conservators on behalf of the persons they represent.

Carter Code, sec, 29; Charlton Code, sec. 29.

Guardian, how appointed.

SEC. 862. In any action it shall be lawful for the court in which the action is pending to appoint a guardian ad litem to any infant or insane defendant in such action, and to compel the person so appointed to act. By such appointment such person shall not be rendered liable to pay costs of action; and he shall, moreover, be allowed a reasonable sum for his charges as such guardian. to be fixed by the court, and taxed in the bill of costs.

Carter Code, sec. 30; Charlton Code, sec. 30.
Ankeny *v.* Blackiston (7 Or. Rep., 413).

Who may prosecute for the death of a child.

SEC. 863. A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

Carter Code, sec. 31; Charlton Code, sec. 31.
David *v.* Waters (5 Pac. Rep., 748). Putnam *v.* S. P. Co. (27 Pac. Rep., 1033). Craft *v.* N. P. R. Co. (35 Pac. Rep., 250). Schleiger *v.* Northern Terminal Co. (72 Pac. Rep., 234).

NOTE.—See secs. 1183, 1185, chap. 37, of this title.

Who may prosecute for the seduction of a daughter or ward.

SEC. 864. A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Carter Code, sec. 32; Charlton Code, sec. 32.
Patterson *v.* Hayden (21 Pac. Rep., 129).
NOTE.—As to criminal prosecution for seduction see sec. 2003, chap. 7, Criminal Code.

When unmarried female may sue for her own seduction.

SEC. 865. An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the section last preceding, shall be a bar to an action by such unmarried female.

Carter Code, sec. 33; Charlton Code, sec. 33.
Breon *v.* Henkle (13 Pac. Rep., 289). Osmun *v.* Winters (35 Pac. Rep., 250).

Parties severally liable on same instrument may be sued together or separately.

SEC. 866. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

Carter Code, sec. 34; Charlton Code, sec. 34.
Kann *v.* Harker (3 Or. Rep., 210). Wade *v.* Creighton (36 Pac. Rep., 289). First Nat. Bank *v.* Cecil (31 Pac. Rep., 61). Tyler *v.* T. of T. A. P. U. (13 Pac. Rep., 329).

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When action not to abate.

SEC. 867. No action shall abate by the death or disability of a party or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

Carter Code, sec. 35; Charlton Code, sec. 35.

Fox, admin., *v.* McKay (1 Alaska Rep., 329). McKay *v.* Fox (121 Fed. Rep., 487; 57 C. C. A., 439; 2 Alaska Rep., 716).

*When action does not abate*: Elliott *v.* Teal (5 Saw. Rep., 188). Dick *v.* Kendall (6 Or. Rep., 166). White *v.* Ladd (56 Pac. Rep., 516). Barker *v.* Ladd (3 Saw. Rep., 44). McBride *v.* N. P. R. Co. (23 Pac. Rep., 814). Mitchell *v.* Schoonover (17 Pac. Rep., 867). Bunneman *v.* Wagner (18 Pac. Rep., 841). White *v.* Johnson (40 Pac. Rep., 511). Murray *v.* Murray (6 Or. Rep., 31). State *v.* Martin (47 Pac. Rep., 196). Nickerson *v.* Nickerson (48 Pac. Rep., 423). Long *v.* Thompson (55 Pac. Rep., 978). Culver *v.* Randle (78 Pac. Rep., 394).

*Transfer of interest*: Posson *v.* Guar. S. & L. Assn. (74 Pac. Rep., 923). Dundee Mtg. Co. *v.* Hughs (89 Fed. Rep., 182). Burns *v.* Kennedy (90 Pac. Rep., 1102). King *v.* Miller (97 Pac. Rep., 542).

*In United States court*: Kelly *v.* Herrall (20 Fed. Rep., 364).

*Practice in bringing in substituted party*: White *v.* Ladd (56 Pac. Rep., 515). White *v.* Johnson (40 Pac. Rep., 511). Culver *v.* Randle (78 Pac. Rep., 394). Stivers *v.* Byrkett (108 Pac. Rep., 1014).

When action for wrong not to abate.

SEC. 868. An action for a wrong shall not abate by the death of any party after the verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

Carter Code, sec. 36; Charlton Code, sec. 36.
NOTE.—See secs. 1183, 1185 of chap. 37 of this title.

When third persons may be substituted as defendants.

SEC. 869. In any action for the recovery of specific personal property, if a third person demand of the defendant the same property, the court, in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party and substitute such person in his place as defendant. Such order shall not be made but on the condition that the defendant deliver the property or its value to such person as the court may direct, nor unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

Carter Code, sec. 37; Charlton Code, sec. 37.

Pope *v.* Ames (25 Pac. Rep., 393). Tobie *v.* Lindsay (8 Or. Rep., 476). Tichenor *v.* Coggins (8 Or. Rep., 272). Nor. Pac. Lbr. Co. *v.* Lang (42 Pac. Rep., 799). Maxwell *v.* Frazer (96 Pac. Rep., 548).

*What defendants may interplead*: Nor. Pac. Lbr. Co. *v.* Lang (42 Pac. Rep., 799).

*Practice*: Nor. Pac. Lbr. Co. *v.* Lang (42 Pac. Rep., 799). New Zealand Ins. Co. *v.* Smith (69 Pac. Rep., 268).

Who may be made parties to action.

SEC. 870. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff or who is a necessary party to the complete determination or settlement of the question involved therein.

Carter Code, sec. 38; Charlton Code, sec. 38.

*Joining parties*: Weiss *v.* Bethel (8 Or. Rep., 527). Stingle *v.* Nevel (9 Or. Rep., 65). State *v.* Metschan (46 Pac. Rep., 791). Beasley *v.* Shively (26 Pac. Rep., 846).

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Who must be made parties to action.

SEC. 871. Of the parties to the action those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or joint interest of many persons, or when the parties are numerous and it may be impracticable to bring them all into court, one or more may sue or defend for the benefit of the whole.

Carter Code, sec. 39; Charlton Code, sec. 39.

State Ins. Co. *v.* O. R. & N. Co. (26 Pac. Rep., 838). Liggett *v.* Ladd (21 Pac. Rep., 133). Trustees *v.* Adams (4 Or. Rep., 88). Tobin *v.* Portland Flouring Mills Co. (68 Pac. Rep., 743).

When court to decide controversy or order other parties brought in.

SEC. 872. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

Carter Code, sec. 40; Charlton Code, sec. 40.

Tichenor *v.* Coggins (8 Or. Rep., 271). Beasley *v.* Shively (26 Pac. Rep., 846). Wheeler *v.* Lack (61 Pac. Rep., 849). Ruble *v.* Coyote G. & S. M. Co. (10 Or. Rep., 41). Bachelor *v.* Richardson (21 Pac. Rep., 392). Bamford *v.* Bamford (4 Or. Rep., 37). Wetmore *v.* Wetmore (5 Or. Rep., 469). Hough *v.* Porter (95 Pac. Rep., 732; 98 Pac. Rep., 1083).

Who may intervene.

SEC. 873. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation, in the success of either of the parties or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint setting forth the ground upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Carter Code, sec. 41; Charlton Code, sec. 41.

Nome-Sinook Min. Co. *v.* Simpson (1 Alaska Rep., 578). Thompson *v.* Allen (1 Alaska Rep., 636). Bechtel *v.* Bechtel (2 Alaska Rep., 397). Gavigan *v.* Creary (2 Alaska Rep., 370).

## CHAPTER FOUR.

### OF THE MANNER OF THEIR COMMENCEMENT.


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874. How actions commenced.
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R. S., 2d Supp., pp. 1211–1214.

How actions commenced.

SEC. 874. Civil actions shall be commenced by filing a complaint with the clerk of the court, and the provisions of section eight hundred and forty-six shall only apply to this subject for the purpose of determining whether an action has been commenced within the time limited by this title. At any time after the action is commenced the plaintiff may cause a summons to be served on the defendant.

Carter Code, sec. 42; Charlton Code, sec. 42.

Coggins *v.* Reeves (3 Or. Rep., 275). Title Guar. Co. *v.* Wrenn (56 Pac. Rep., 271). Burns *v.* White Swan Min. Co. (58 Pac. Rep., 102). Belknap *v.* Charlton (34 Pac. Rep., 758). Posson *v.* Guar. S. & L. Assn. (74 Pac. Rep., 923). Hawkins *v.* Donnerberg (66 Pac. Rep., 909). Dutro *v.* Ladd (91 Pac. Rep., 459). Kelsay *v.* Taylor (107 Pac. Rep., 609).

Requisites of summons.

SEC. 875. The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the title thereof. It shall be issued by the court or the clerk thereof and directed to the defendant, and shall require him to appear and answer the complaint as in this section provided, or judgment for want thereof will be taken against him. The defendant shall appear and answer the complaint within thirty days from the date of the service.

Carter Code, sec. 43; Charlton Code, sec. 43.

White *v.* Johnson (40 Pac. Rep., 511). Smith *v.* Ellendale Mfg. Co. (4 Or. Rep., 70). Trullinger *v.* Todd (5 Or. Rep., 36). Bailey *v.* Williams (6 Or. Rep., 71). Hunsaker *v.* Coffin (2 Or. Rep., 107).

Summons to contain notice of what plaintiff demands.

SEC. 876. There shall also be inserted in the summons a notice in substance as follows:

First. In any action for the recovery of money or damages only that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint;

Second. In other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

Carter Code, sec. 44; Charlton Code, sec. 44.

Swift *v.* Myers (37 Fed. Rep., 37).

In Kingsbury *v.* Pac. Coal & Tr. Co. (3 Alaska Rep., 43), held, that the "Statute requires that in an action for the recovery of money or damages the summons shall state what sum judgment shall be taken for upon default, and in other actions the summons must state that upon default of the defendant to answer, the plaintiff will apply for the relief demanded."

By whom served and where and when returned.

SEC. 877. The summons shall be served by the marshal or any deputy, or by a person specially appointed by him or by the court or judge thereof. The summons shall be returned to the court or clerk thereof with whom the complaint is filed within forty days after its delivery to the officer or other person for service, with proof of such service or that the defendant can not be found. The marshal or other person to whom the summons is delivered shall indorse thereon the date of such delivery.

Carter Code, sec. 45; Charlton Code, sec. 45.

Heatherly *v.* Hadley (4 Or. Rep., 1). Huntington *v.* Crouter (54 Pac. Rep., 208). White *v.* Johnson (40 Pac. Rep., 511). White *v.* Ladd (56 Pac. Rep., 515). Abraham *v.* Miller (95 Pac. Rep., 814).

How served and upon whom.

SEC. 878. The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an office in the District, then to any clerk

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or agent of such corporation who may reside or be found in the District, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent:

Second. If against any incorporated town, school district, or other public corporation in the District, to the clerk of such incorporated town, school district, or other public corporation;

Third. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian, or if there be none within the District, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

Fourth. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and if a guardian has been appointed, to such guardian and to the defendant personally;

Fifth. In all cases, to the defendant personally, or if he be not found, to some person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant.

Carter Code, sec. 46; Charlton Code, sec. 46.

American G. Min. Co. *v.* Giant Powder Co. (1 Alaska Rep., 667). Alaska Comm. Co. *v.* Dabney (144 Fed. Rep., 1; 75 C. C. A., 131). Pearce *v.* Sutherland (3 Alaska Rep., 302). Swift *v.* Myers (37 Fed. Rep., 37). Wilson *v.* Fine (38 Fed. Rep., 789). Heatherly *v.* Hadley (2 Or. Rep., 276). White *v.* Johnson (40 Pac. Rep., 511). Willamette Falls Co. *v.* Williams (1 Or. Rep., 112). Foshier *v.* Narver (34 Pac. Rep., 21). Bailey *v.* Malheur Irrig. Co. (57 Pac. Rep., 910). Belfils *v.* Flint (14 Pac. Rep., 295). Knapp *v.* Wallace (92 Pac. Rep., 1054). Brown *v.* Lewis (92 Pac. Rep., 1058).

*Corporations*: Amer. G. Min. Co. *v.* Giant Powder Co. (1 Alaska Rep., 667). Holgate *v.* Or. Pac. R. Co. (17 Pac. Rep., 859). Weaver *v.* Southern Or. Co. (48 Pac. Rep., 171). Farrell *v.* Oreg. Gold Co. (49 Pac. Rep., 876). Bailey *v.* Malheur Irrig. Co. (57 Pac. Rep., 910). Aldrich *v.* Anchor Coal Co. (32 Pac. Rep., 756). Coast Land Co. *v.* Or. Pac. Col. Co. (75 Pac. Rep., 884). Hildebrand *v.* United Artesans (79 Pac. Rep., 347). Riddle *v.* Order of Pueblo (89 Pac. Rep., 640). Cunningham *v.* Klamath Lake Co. (101 Pac. Rep., 213, 1099).

*Minors*: Harris *v.* Sargent (60 Pac. Rep., 608).

*When not found*: Caro Bros. *v.* Or. C. R. Co. (10 Or. Rep., 510). Hass *v.* Sedlack (9 Or. Rep., 462). Settlemire *v.* Sullivan (97 U. S. Rep., 444). Carland *v.* Heineborg (2 Or. Rep., 75). Swift *v.* Meyers (37 Fed. Rep., 99). Alaska Comm. Co. *v.* Debney (2 Alaska Rep., 303).

NOTE.—As to service on railroads, see sec. 768, chap. 33, Civil Code. As to justice court service, see sec. 1782, chap. 92, of this title.

When order for publication may be made.

SEC. 879. When service of the summons can not be made as prescribed in the last preceding section, and the defendant after due diligence can not be found within the District, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or justice of the peace in an action in a justice's court, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the District, the court or judge thereof, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the District, or the cause of action arose therein;

Second. When the defendant, being a resident of the District, has departed therefrom with intent to defraud his creditors or to avoid the service of the summons, or with like intent keeps himself concealed therein, or has departed from the District and remained absent therefrom six consecutive weeks;

Third. When the defendant is not a resident of the District, but has property therein, and the court has jurisdiction of the subject of the action;

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Fourth. When an action is to have a marriage declared void, or for a divorce in the cases prescribed by law;

Fifth. When the subject of the action is personal property in the District, and the defendant has a claim or lien, of interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

Sixth. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in said District, or satisfy or redeem from the same. The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint.

Carter Code, sec. 47; Charlton Code, sec. 47.

*Generally*: Marx *v.* Ebner (180 U. S. Rep., 314; 1 Alaska Rep., 801). Nowell *v.* Internat. Trust Co. (3 Alaska Rep., 258, 260). Penoyer *v.* Neff (95 U. S. Rep., 714). Hart *v.* Sansome (110 U. S. Rep., 151). Willamette R. E. Co. *v.* Hendricks (42 Pac. Rep., 514). Alliance Trust Co. *v.* O'Brien (50 Pac. Rep., 801). Northcut *v.* Lemery (8 Or. Rep., 316). O'Dell *v.* Campbell (9 Or. Rep., 298). Galpin *v.* Page (18 Wall., 364). Cooper *v.* Reynolds (10 Wall., 319). Goodale *v.* Coffey (33 Pac. Rep., 990). Neff *v.* Penoyer (3 Saw. Rep., 274). Caro *v.* Oreg. N. C. R. Co. (10 Or. Rep., 510). Ladd *v.* Ramsby (10 Or. Rep., 207). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359). George *v.* Nowlan (64 Pac. Rep., 1). McFarlane *v.* Cornelius (73 Pac. Rep., 325). Pursel *v.* Deal (18 Pac. Rep., 461). Beekman *v.* Hamlin (24 Pac. Rep., 955; 31 Pac. Rep., 707). Eddy *v.* Coldwell (31 Pac. Rep., 475). Knapp *v.* Wallace (92 Pac. Rep., 1054). Fishburn *v.* Londerhausen (92 Pac. Rep., 1060).

*Affidavit*: McDonald *v.* Cooper (32 Fed. Rep., 745). Pike *v.* Kennedy (15 Pac. Rep., 637). Goodale *v.* Coffey (33 Pac. Rep., 990). Colburn *v.* Barrett (26 Pac. Rep., 1008). George *v.* Nowlen (64 Pac. Rep., 1). McFarlane *v.* Cornelius (73 Pac. Rep., 325).

NOTE.—As to publication of summons in action for partition, see sec. 1233, chap. 43, of this title.

Publication, how made; personal service out of the District.

SEC. 880. The order shall direct the publication to be made in a newspaper to be designated by the court or judge or clerk as the most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the District shall be equivalent to publication and deposit in the post office. In either case, the defendant shall appear and answer within thirty days after the completion of such period of publication. In case of personal service out of the District, the summons shall specify the time prescribed in the order for publication.

Carter Code, sec. 48; Charlton Code, sec. 48.

McDonald *v.* Cooper (32 Fed. Rep., 745). O'Dell *v.* Campbell (9 Or. Rep., 298). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359). Goodale *v.* Coffey (33 Pac. Rep., 990). McFarlane *v.* Cornelius (73 Pac. Rep., 325). Knapp *v.* Wallace (92 Pac. Rep., 1054).

When defendant may be allowed to defend after judgment.

SEC. 881. The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment and within one year after the entry of such judgment on such

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terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith shall not be thereby affected.

Carter Code, sec. 49; Charlton Code, sec. 49.

Smith *v.* Smith (3 Or. Rep., 363). Mayer *v.* Mayer (39 Pac. Rep., 1002). White *v.* Northwest Stage Co. (5 Or. Rep., 99). Bailey *v.* Williams (6 Or. Rep., 73). Waymire *v.* Shipley (97 Pac. Rep., 807; 99 Pac. Rep., 807).

When the summons is returned not found, how plaintiff may proceed.

SEC. 882. Whenever it shall appear by the return of the marshal, his deputy, or the person appointed to serve a summons that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until service be had; or the plaintiff may proceed by publication, as in this chapter provided, at his election.

Carter Code, sec. 50; Charlton Code, sec. 50.

Bank of Colfax *v.* Richardson (54 Pac. Rep., 359).

When summons not served on all the defendants.

SEC. 883. When the action is against two or more defendants, and the summons is served on one or more but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

Second. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants; or,

Third. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Carter Code, sec. 51; Charlton Code, sec. 51.

*Subdivision 1*: Shoup *v.* Sabin (3 Alaska Rep., 57).

Richardson *v.* Fuller (2 Or. Rep., 179). Cox *v.* Alexander (46 Pac. Rep., 794). Sears *v.* McGrew (10 Or. Rep., 48). Sabin *v.* Mitchell (39 Pac. Rep., 635). Ah Lep *v.* Gung Choy (11 Pac. Rep., 72). Fisk *v.* Henarre (13 Pac. Rep., 193). Tillamook Dairy Assn. *v.* Schermerhorn (51 Pac. Rep., 438). Nor. Pac. Lbr. Co. *v.* Spore (75 Pac. Rep., 891). Stivers *v.* Byrkett (108 Pac. Rep., 1015). Benbow *v.* The James Jahns (108 Pac. Rep., 634).

Proof of service of summons.

884. Proof of the service of the summons, or of the deposit thereof in the post office, shall be as follows:

First. If the service or deposit in the post office be by the marshal or his deputy, the certificate of such officer; or,

Second. If by any other person, his affidavit thereof; or,

Third. In case of publication, the affidavit of the printer or his foreman, or his principal clerk, showing the same; or,

Fourth. The written admission of the defendant in case of service otherwise than by publication; the certificate, affidavit, or admission must state the time and place of service; and in case of deposit in the post office, the time and place thereof.

Carter Code, sec. 52; Charlton Code, sec. 52.

O'Dell *v.* Campbell (9 Or. Rep., 298). Dennison *v.* Storey (1 Or. Rep., 273). Pennoyer *v.* Neff (95 U. S. Rep., 721). Moffitt *v.* McGrath (36 Pac. Rep., 578). Heatherley *v.* Hadley (4 Or. Rep., 18). Bennett *v.* Minott (39 Pac. Rep., 997). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359). Clinton *v.* City of Portland (38 Pac. Rep., 407). Hawkins *v.* Donnerberg (66 Pac. Rep., 908). McFarlane *v.* Cornelius (73 Pac. Rep., 325). Abraham *v.* Miller (95 Pac. Rep., 814).

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When court acquires jurisdiction.

SEC. 885. From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

Carter Code, sec. 53; Charlton Code, sec. 53.

Myers *v.* Swineford (1 Alaska Rep., 10). Valentine *v.* Roberts (1 Alaska Rep., 536). Ex parte Cooper (143 U. S. Rep., 472; 1 Alaska Rep., 718). Kingsbury *v.* Pac. Coal & Trans. Co. (3 Alaska Rep., 41).

*When court acquires jurisdiction*: Woodward *v.* Baker (10 Or. Rep., 49). U. S. *v.* Yakutat & S. R. Co. (2 Alaska Rep., 632).

NOTE.—See sec. 1331, chap. 50, of this title and sec. 878 ante.

*Appearance*: U. S. *v.* Yakutat & S. R. Co. (2 Alaska Rep., 628).

*Effect to waive service of summons*: Rogue River Min. Co. *v.* Walker (1 Or. Rep., 343). Harker *v.* Fahey (2 Or. Rep., 89). White *v.* N. W. Stage Co. (5 Or. Rep., 102). Kinkade *v.* Meyers (21 Pac. Rep., 557). Brown *v.* Deschuttes Bridge Co. (35 Pac. Rep., 177). Towns *v.* Klamath Co. (53 Pac. Rep., 604). Belknap *v.* Charlton (34 Pac. Rep., 758). Mayer *v.* Mayer (39 Pac. Rep., 1002). Sealy *v.* Calif. Lbr. Co. (24 Pac. Rep., 197). Smith *v.* Day (65 Pac. Rep., 1055). Hawkins *v.* Donnerberg (66 Pac. Rep., 998). Dunn *v.* Portland St. R. Co. (65 Pac. Rep., 1052). Lung Chung *v.* N. P. R. Co. (19 Fed. Rep., 254). Multnomah L. & B. Co. *v.* Weston B. & B. Co. (99 Pac. Rep., 1066).

*Special appearance*: Belknap *v.* Charlton (34 Pac. Rep., 758). Graham *v.* Spencer (14 Fed. Rep., 603). Lung Chung *v.* N. P. R. Co. (19 Fed. Rep., 254). Meyer *v.* Brooks (44 Pac. Rep., 281). Mayer *v.* Mayer (39 Pac. Rep., 1002). White *v.* Johnson (40 Pac. Rep., 511). Sealy *v.* Calif. Lbr. Co. (24 Pac. Rep., 197). Kinkade *v.* Meyers (21 Pac. Rep., 557). Godfrey *v.* Douglas County (43 Pac. Rep., 171). Ankeny *v.* Blackiston (7 Or. Rep., 408). Harker *v.* Fahey (2 Or. Rep., 89). U. S. *v.* Yakutat & S. R. Co. (2 Alaska Rep., 628).

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# CHAPTER FIVE.

## OF THE PLEADINGS.

Sec.
886. Forms of pleadings, how determined.
Admiralty omitted.
Sec.
887. Pleadings on the part of plaintiff and defendant.

Mar. 2, 1903.
32 Stat. L., 944.
Pleadings.
Admiralty omitted.

SEC. 886. All the forms of pleading heretofore existing in actions at law and suits in equity are abolished, and hereafter the forms of pleading in causes in law and equity in courts of record and the rules by which the sufficiency of such pleadings is to be determined shall be those prescribed by this code.

Amends Carter Code, sec. 54; Charlton Code, sec. 54.

Thompson *v.* Burk (2 Alaska Rep., 256). Kuzek *v.* Magaha (148 Fed. Rep., 618; 78 C. C. A., 465). Crane *v.* Larson (15 Pac. Rep., 326). Keene *v.* Eldridge (82 Pac. Rep., 803).

NOTE.—See sec. 833, chap. 1, of this title.

June 6, 1900.
31 Stat. L., 341.
R. S., 2d Supp., p. 1214.
Pleadings on the part of plaintiff.
—defendant.

SEC. 887. The only pleadings on the part of the plaintiff shall be—
First. The complaint;
Second. The demurrer; or,
Third. The reply.
And on the part of the defendant
First. The demurrer; or,
Second. The answer.

Carter Code, sec. 55; Charlton Code, sec. 55.

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# CHAPTER SIX.

## OF THE COMPLAINT.

June 6, 1900.
31 Stat. L., 341. R. S., 2d Supp., p. 1214.

Sec.
888. First pleading to be complaint.
889. What complaint to contain.

First pleading to be complaint.

SEC. 888. The first pleading on the part of the plaintiff shall be the complaint.

Carter Code, sec. 56; Charlton Code, sec. 56.

What complaint to contain.

SEC. 889. The complaint shall contain—

First. The title of the cause, specifying the name of the court and the names of the parties to the action, plaintiff and defendant.

Second. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded the amount thereof shall be stated.

Carter Code, sec. 57; Charlton Code, sec. 57.

Kimball *v.* Miller (1 Alaska Rep., 349). Malony *v.* Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 799). Esberg-Bachman Leaf Tobacco Co. *v.* Held (62 Fed. Rep., 962; 1 Alaska Rep., 799). Gibson *v.* Canad. Pac. Nav. Co. (1 Alaska Rep., 407). Baker & Co. *v.* Healy (1 Alaska Rep., 45). Mitchell *v.* Galen (1 Alaska Rep., 339). Osgood *v.* Donnely, (1 Alaska Rep., 385). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 727). Runner *v.* Woitke (2 Alaska Rep., 469). Bechtel *v.* Bechtel (2 Alaska Rep., 397). Terril *v.* Terril (2 Alaska Rep., 475). Pacey *v.* McKinney (125 Fed. Rep., 675; 60 C. C. A., 365; 2 Alaska Rep., 671). Bronson *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671). Miocene Ditch Co. *v.* Lyng (138 Fed. Rep., 544; 70 C. C. A., 458; 2 Alaska Rep., 673). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424; 2 Alaska Rep., 720). Jorgenson Co. *v.* Sheldon (2 Alaska Rep., 607). Corbus *v.* Alaska Treadwell Co. (99 Fed. Rep., 334; 1 Alaska Rep., 737). U. S. *v.* N. W. Trading Co. (1 Alaska Rep., 5). Alaska Comm. Co. *v.* Debney (144 Fed. Rep., 1). Dettering *v.* Nordstrom (148 Fed Rep., 81). Miller *v.* Margerie (149 Fed. Rep., 694). Noyes *v.* Marlott (156 Fed. Rep., 753). Price *v.* Connors (146 Fed., 503; 77 C. C. A., 17). Burr *v.* House (3 Alaska Rep., 641). Nowell *v.* McBride (162 Fed. Rep., 632; 89 C. C. A., 318). McQuillan *v.* Tanana Elec. Co., (3 Alaska Rep., 110). Johanson *v.* Sondheim & Dobbins (145 Fed. Rep., 620; 76 C. C. A., 310). Greenland *v.* Mitchell (3 Alaska Rep., 271). Lindblom *v.* Fallett (145 Fed. Rep., 805; 76 C. C. A., 369). Nor. Comm. Co. *v.* Lindblom (162 Fed. Rep., 250; 89 C. C. A., 230). Miller *v.* Amer. Gold Mining Co. (3 Alaska Rep., 1). Morris *v.* Marsh (3 Alaska Rep., 140). Cook *v.* Klonos (164 Fed. Rep., 529; 90 C. C. A., 403). Anderson *v.* Anvil Hydraulic Co. (3 Alaska Rep., 496). Levy *v.* Larson (167 Fed. Rep., 110; 92 C. C. A., 562).

*Statement of facts*: Hayden *v.* Steadman (3 Or. Rep., 550). Longshore Print Co. *v.* Howell (38 Pac. Rep., 547). Woodward *v.* O. R. & N. Co. (22 Pac. Rep., 1076). Lillienthal *v.* Hotaling Co. (15 Pac. Rep., 630). Davis *v.* Wait (8 Pac. Rep., 356). Giroux Amalg. Co. *v.* White (28 Pac. Rep., 390). Heatherly *v.* Hadley (2 Or. Rep., 269). Smith *v.* Foster (5 Or. Rep., 44). Moore *v.* Holladay (72 Pac. Rep., 801). Harvey *v.* S. P. R. Co. (80 Pac. Rep., 1061). Normile *v.* O. R. & N. Co. (69 Pac. Rep., 928). U. S. Mortgage Co. *v.* McClure (70 Pac. Rep., 543). Turney *v.* S. P. Co. (75 Pac. Rep., 144; 76 Pac. Rep., 1080). Salem L. & T. Co. *v.* Anson (69 Pac. Rep., 675). Union Lt. & Pr. Co. *v.* Lichtey (71 Pac. Rep., 1044). Keene *v.* Eldridge (82 Pac. Rep., 803). Ireland *v.* Ward (93 Pac. Rep., 932). Nolan *v.* Hughs (94 Pac. Rep., 504). Hoskins *v.* Scott (96 Pac. Rep., 1112).

NOTE.—As to what are material facts, see sec. 918, chap. 10, of this title.

*Title of court*: Adams *v.* Kelly (74 Pac. Rep., 399).

*Exhibits*: Caspary *v.* Portland (24 Pac. Rep., 1036).

*Arguments, inferences, and matters of law*: Simpson *v.* Prather (5 Or. Rep., 86). Leasure *v.* Forquer (41 Pac. Rep., 665). Longshore Print Co. *v.* Howell (38 Pac. Rep., 547). Larson *v.* O. R. & N. Co. (23 Pac. Rep., 974).

*Conditions, averment of performance*: Buford *v.* N. Y. Life Ins. Co. (5 Or. Rep., 334). Meyers *v.* Pac. Const. Co. (27 Pac. Rep., 584). Nye *v.* Bill

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Nye G. M. & M. Co. (71 Pac. Rep., 1043). Wells, Fargo & Co. *v.* Page (82 Pac. Rep., 856).

*Damages*: Bussard & Robeson *v.* Hibler (71 Pac. Rep., 642). Turney *v.* S. P. Co. (75 Pac. Rep., 144; 76 Pac. Rep., 1080). Maynard *v.* Ore R. Co. (72 Pac. Rep., 590). Adcock *v.* O. R. & N. Co. (77 Pac. Rep., 78).

*Fraud*: Rolfes *v.* Russell (5 Or. Rep., 402). Howell *v.* Manning (6 Or. Rep., 416). Specht *v.* Allen (6 Pac. Rep., 494). Misner *v.* Knapp (9 Pac. Rep., 65). Pearce *v.* Buell (29 Pac. Rep., 78). Wimer *v.* Smith (30 Pac. Rep., 416). Findlayson *v.* Findlayson (21 Pac. Rep., 57). Schoellhamer *v.* Rometsch (38 Pac. Rep., 344). Fahie *v.* Presey (2 Or. Rep., 26). Leasure *v.* Forquer (41 Pac. Rep., 665).

*Negligence*: Heilner *v.* Union County (7 Or. Rep., 85). Woodward *v.* O. R. & N. Co. (22 Pac. Rep., 1076). Lakin *v.* Oreg. P. R. Co. (15 Pac. Rep., 641). Knathla *v.* Oreg. S. L. R. Co. (27 Pac. Rep., 91). Lieuallen *v.* Musgrove (54 Pac. Rep., 200). Cedarson *v.* Oreg. Nav. Co. (62 Pac. Rep., 637). Hough *v.* Grant Spire's Power Co. (69 Pac. Rep., 655). Robinson *v.* Taku Fish Co. (71 Pac. Rep., 790). Norwich Ins. Co. *v.* Oreg. R. Co. (78 Pac. Rep., 1025). Lindsay *v.* Grande Ronde Lbr. Co. (87 Pac. Rep., 145).

*Ownership of title*: McKay *v.* Musgrove (13 Pac. Rep., 770). Crisman *v.* State Ins. Co. (18 Pac. Rep., 466). Hartwig *v.* State Ins. Co. (26 Pac. Rep., 840). Dorothy *v.* Pierce (41 Pac. Rep., 668). Duzan *v.* Meserve (34 Pac. Rep., 548). Bilew *v.* Paisley (21 Pac. Rep., 934). Sterling *v.* Sterling (72 Pac. Rep., 741). Carsto *v.* Murray (81 Pac. Rep., 883). State *v.* Warner Valley Stock Co. (76 Pac. Rep., 780). Burns *v.* Kennedy (90 Pac. Rep., 1102).

*Contracts*: Hutchcroft *v.* Herran (52 Pac. Rep., 692). Suksdorff *v.* Brigham (12 Pac. Rep., 818). Laurant *v.* Lanning (51 Pac. Rep., 80). Washington Inv. Assn. *v.* Stanley (63 Pac. Rep., 489). Taylor *v.* Cohn (84 Pac. Rep., 388). Austin *v.* Vanderbilt (85 Pac. Rep., 519). Haywood Bros. & Wakefield Co. *v.* Doernbecher Mfg. Co. (86 Pac. Rep., 357). Harvey *v.* Lidvall (87 Pac. Rep., 895). Borind Lbr. Co. *v.* Roots (90 Pac. Rep., 487).

*Consideration, averment of*: Paddock *v.* Hume (6 Or. Rep., 82). Cougill *v.* Farmers Ins. Co. (35 Pac. Rep., 975).

NOTE.—As to pleading judgments of courts of special jurisdiction, see sec. 909, chap. 10, of this title.

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# CHAPTER SEVEN.

## OF THE DEMURRER.


Sec.
890. When the defendant may demur, and for what.
891. Demurrer must specify ground of objection.
892. How to proceed if complaint be mended.
893. Objection when taken by answer.
894. Objection when deemed waived.


June 6, 1900.
31 Stat. L., 342. R. S., 2d Supp., p. 1215.
When defendant may demur, and for what.

SEC. 890. The defendant may demur to the complaint within the time required by law to appear and answer, when it appears upon the face thereof, either—

First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the action has not been commenced within the time limited by this code.

Carter Code, sec. 58; Charlton Code, sec. 58.

Kimball *v.* Miller (1 Alaska Rep., 349). Kohn *v.* McKinnon (90 Fed. Rep., 623; 1 Alaska Rep., 800). McBride *v.* Coy (1 Alaska Rep., 238). Mitchell *v.* Galen (1 Alaska Rep., 339). Runner *v.* Woitke (2 Alaska Rep., 469). Murray *v.* Farrell (2 Alaska Rep., 300). Miocene Ditch Co. *v.* Lyng (138 Fed. Rep., 544; 70 C. C. A., 458; 2 Alaska Rep., 730). Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A., 459; 2 Alaska Rep., 730). Jor-

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genson Co. *v.* Sheldon (2 Alaska Rep., 607). Russell *v.* Hayner (130 Fed. Rep., 90; 64 C. C. A., 424; 2 Alaska Rep., 702. Dryden *v.* Sewell (2 Alaska Rep., 189). Patterson *v.* Berry (125 Fed. Rep., 902; 66 C. C. A., 610; 2 Alaska Rep., 754). Johanson *v.* Sondheim & Dobbins (145 Fed. Rep., 620.

*Generally*: Torrence *v.* Strong (4 Or. Rep., 45). Ladd *v.* Mason (10 Or. Rep., 313). Sunny Side Land Co. *v.* Willamette R. R. Co. (26 Pac. Rep., 835). Longshore Print Co. *v.* Howell (38 Pac. Rep., 547). O'Hara *v.* Parker (39 Pac. Rep., 1004). Rice *v.* Rice (10 Pac. Rep., 495). Neiss *v.* Yocum (9 Saw. Rep., 25). Conroy *v.* Oreg. Const. Co. (10 Saw. Rep., 630). English *v.* Savage (5 Or. Rep., 518). Cohen *v.* Ottenheimer (10 Pac. Rep., 20). Wells *v.* Applegate (6 Pac. Rep., 770). Richards *v.* Fanning (5 Oreg. Rep., 356). Olds *v.* Cary (10 Pac. Rep., 786). Drake *v.* Sworts (33 Pac. Rep., 563). Winter *v.* Norton (1 Or. Rep., 42). Huffman *v.* McDaniel (1 Or. Rep., 261). Hughs *v.* Pratt (60 Pac. Rep., 707). Hawkins *v.* Donnerburg (66 Pac. Rep., 691). Crossen *v.* Grandy (70 Pac. Rep., 906). Hough *v.* Grant's Spire's Power Co. (69 Pac. Rep., 655). State *v.* Portland G. E. Co. (95 Pac. Rep., 722). Multnomah Co. *v.* Faling (104 Pac. Rep., 964).

*No legal capacity to sue*: Owings *v.* Turner (87 Pac. Rep., 160).

*Another action pending*: Hopwood *v.* Patterson (2 Or. Rep., 50).

*Defect of parties*: Cohen *v.* Ottenheimer (10 Pac. Rep., 20). Osburn *v.* Logus (42 Pac. Rep., 997). State *v.* Metschan (46 Pac. Rep., 791). White *v.* Delschneider (1 Or. Rep., 254). Minter *v.* Durham (11 Pac. Rep., 231). Benson *v.* Keller (60 Pac. Rep., 918).

*Misjoinder of causes of action*: Corbett *v.* Wrenn (35 Pac. Rep., 658). Powell *v.* Dayton S. & G. R. Co. (11 Pac. Rep., 222). Smith *v.* Day (65 Pac. Rep., 1055). Hayden *v.* Pierce (52 Pac. Rep., 1049). Cohn *v.* Ottenheimer (10 Pac. Rep., 20).

*Insufficient facts*: The *Victorian* (32 Pac. Rep., 1040). Weiss *v.* Bethel (8 Or. Rep., 523). Olds *v.* Cary (10 Pac. Rep., 786). Marx *v.* Jorgenson (21 Pac. Rep., 310). Darr *v* Guar. S. & L. Assn. (81 Pac. Rep., 565).

*Statute of limitations*: Weiss *v.* Bethel (8 Or. Rep., 527). Smith *v.* Day (65 Pac. Rep., 1055). Spaur *v.* McBee (23 Pac. Rep., 818). Conroy *v.* Oreg. Const. Co. (10 Saw. Rep., 630; 23 Fed. Rep., 73). Hawkins *v.* Donnerberg (66 Pac. Rep., 691). Ausplund *v.* Aetna Indemnity Co. (81 Pac. Rep., 577).

Demurrer must specify ground of objection.

SEC. 891. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint or to any of the alleged causes of action stated therein.

Carter Code, sec. 59; Charlton Code, sec. 59.

Kimball *v.* Miller (1 Alaska Rep., 349). Marx *v.* Jorgenson (21 Pac. Rep., 310). State *v.* Metschan (46 Pac. Rep., 791). Waggy *v.* Scott (45 Pac. Rep., 774). Barbre *v.* Goodale (43 Pac. Rep., 378). Simpson *v.* Prather (5 Or. Rep., 86). Ketchum *v.* State (2 Or. Rep., 103). Owings *v.* Turner (87 Pac. Rep., 160). State *v.* Portland G. E. Co. (95 Pac. Rep., 722).

How to proceed if complaint be amended.

SEC. 892. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Carter Code, sec. 60; Charlton Code, sec. 60.

Kimball *v.* Miller (1 Alaska Rep., 349). Cohen *v.* Ottenheimer (10 Pac. Rep., 20). Bush *v.* Pioneer Mining Co. (3 Alaska Rep., 610).

Objection, when taken by answer.

SEC. 893. When any of the matters enumerated in section eight hundred and ninety do not appear upon the face of the complaint the objection may be taken by answer.

Carter Code, sec. 61: Charlton Code, sec. 61.

Kimball *v.* Miller (1 Alaska Rep., 349). Dryden *v.* Sewell (2 Alaska Rep., 189).

Objection, when deemed waived.

SEC. 894. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only

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the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Carter Code, sec. 62: Charlton Code, sec. 62.

Kimball *v.* Miller (1 Alaska Rep., 347, 349). Dryden *v.* Sewell (2 Alaska Rep., 189). Johanson *v.* Sondheim & Dobbins, 145 Fed. Rep., 620). Osburn *v.* Logus (42 Pac. Rep., 997). Spaur *v.* McBee (23 Pac. Rep., 818). Bowen *v.* Emmerson (3 Or. Rep., 452). Evarts *v.* Steger (5 Or. Rep., 147). Mack *v.* Salem (6 Or. Rep., 275). King *v.* Boyd (4 Or. Rep., 326). Ball *v.* Doud (37 Pac. Rep., 70). Schmidt *v.* Day (39 Pac. Rep., 870). Willits *v.* Walter (52 Pac. Rep., 24). Hargett *v.* Beardsley (54 Pac. Rep., 202). Carver *v.* Jackson Co. (29 Pac. Rep., 77). Wyatt *v.* Henderson (48 Pac. Rep., 790). Wilson *v.* Wilson (38 Pac. Rep., 185). Copper *v.* Thomason (45 Pac. Rep., 295). Goodwin *v.* Morris (9 Or. Rep., 324). Davis *v.* Davis (25 Pac. Rep., 140). State *v.* Chadwick (10 Or. Rep., 427). Hyland *v.* Hyland (23 Pac. Rep., 811. Baker City *v.* Murphey (42 Pac. Rep., 133). Chan Sing *v.* Portland (60 Pac. Rep., 718). Durkee *v.* Carr (63 Pac. Rep., 117). Eaton *v.* O. R. & N. Co. (24 Pac. Rep., 415). Anderson *v* Nor. Pac. Lbr. Co. (28 Pac. Rep., 5). Bellinger *v.* Thompson (37 Pac. Rep., 714). Osburn *v.* Logus (42 Pac. Rep., 997). Chamberlin *v.* Hibbard (38 Pac. Rep., 437). Miller *v.* Hirschberg (40 Pac. Rep., 506). Fiore *v.* Ladd (46 Pac. Rep., 144). Moore *v.* Holladay (72 Pac. Rep., 801). Adams *v.* Kelly (74 Pac. Rep., 399). Kallyton *v.* Kallyton (78 Pac. Rep., 332). Duff *v.* Willamette I. & S. Works (78 Pac. Rep., 363). Woolley *v.* Plain Dealer Pub. Co. (84 Pac. Rep., 473). Owings *v.* Turner (87 Pac. Rep., 160). In re Morrison's Estate (87 Pac. Rep., 1042). Ready *v.* Schmidt (95 Pac. Rep., 1111). Parrish *v.* Parrish (96 Pac. Rep., 1066). Maxwell *v.* Frazer (96 Pac. Rep., 548). Bohn *v.* Wilson (101 Pac. Rep., 202).

## CHAPTER EIGHT.

### OF THE ANSWER.

Sec.
895. What the answer shall contain.
896. Nature of counterclaim, and how stated.
897. Defendant may demur to one or more of several causes of action and answer the rest.
898. Sham and irrelevant answers stricken out on motion.

SEC. 895. The answer of the defendant shall contain —

First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.

June 6, 1900.
31 Stat. L., 342–343.
R. S., 2d Supp., pp. 1215–1216.
What the answer shall contain.

Carter Code, sec. 63; Charlton Code, sec. 63.

Heid *v.* Ebner (133 Fed. Rep., 156; 66 C. C. A., 222; 2 Alaska Rep., 727). Shields *v.* Mongallon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 728) Elliott *v.* Kuzek (2 Alaska Rep., 587). Ebner *v.* Heid (2 Alaska Rep., 600). Pac. Coast Co. *v.* Brown (2 Alaska Rep., 621). Thompson *v.* Burk (2 Alaska Rep., 256). Lindblom *v.* Kidston (2 Alaska Rep., 292). Piper *v.* Cashell (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 672). Petterson *v.* Berry (125 Fed. Rep., 902; 60 C. C. A., 610; 2 Alaska Rep., 754). Osgood *v.* Donnelly (1 Alaska Rep., 385). Archer *v.* Biehl (136 Fed. Rep., 113; 69 C. C. A., 101; 2 Alaska Rep., 639). McGrath *v.* Valentine (167 Fed. Rep., 473; 93 C. C. A., 109). Lindblom *v.* Rocks (146 Fed. Rep., 660; 77 C. C. A., 86).

*Denials*: Coos Bay R. Co. *v.* Siglin (38 Pac. Rep., 192). Butchel *v.* Evans (28 Pac. Rep., 67). Moser *v.* Jenkins (5 Or. Rep., 447). O'Reilly *v.* Wilson (4 Or. Rep., 97). Schovill *v.* Barney (4 Or. Rep., 288). Miller *v.* Tobin (9 Saw. Rep., 408; 18 Fed. Rep., 609). Ladd *v.* Ramsby (10 Or. Rep., 207). Lung Louis *v.* Brown (7 Or. Rep., 326). Cogswell *v.* Hayden (5 Or. Rep., 23). Drexler *v.* Smith (30 Fed. Rep., 755). Davenport *v.* Dose (67 Pac. Rep., 112). Wilson *v.* Allen (2 Pac. Rep., 91). Colburn *v.* Barrett (26 Pac. Rep., 1008). Robbins *v.* Baker (2 Or. Rep., 52). Sherman *v.* Osburn (8 Or. Rep., 66). Law Trust Soc. *v.* Hogue (62

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Pac. Rep., 380; 63 Pac. Rep., 690). Hammer *v.* Downing (64 Pac. Rep., 651). Or. R. Co. *v.* O. R. & N. Co. (10 Saw. Rep., 464). Randall *v.* Simmons (67 Pac. Rep., 513). Fleshman *v.* Meyer (80 Pac. Rep., 209). Herring, Hall Marvin Co. *v.* Smith (72 Pac. Rep., 704; 73 Pac. Rep., 340). Overholt *v.* Dietz (72 Pac. Rep., 695). Dutro *v.* Ladd (91 Pac. Rep., 459). McGrath *v.* Valentine (167 Fed. Rep., 473; 93 C. C. A., 109).

*What may be denied*: Foran *v.* Dealey (4 Or. Rep., 92). White *v.* Allen (3 Or. Rep., 103).

*New matter*: Troy Laundry Co. *v.* Henry (31 Pac. Rep., 484). Heidenreich *v.* Ætna Ins. Co. (37 Pac. Rep., 64). Coos Bay R. Co. *v.* Siglin (38 Pac. Rep., 192). Jameson *v.* Caldwell (31 Pac. Rep., 279). Buchtel *v.* Evans (28 Pac. Rep., 67). Wythe *v.* City of Salem (4 Saw. Rep., 88). Clarke *v.* Wick (36 Pac. Rep., 165). Benicia Agric. Wks. *v.* Creighton (28 Pac. Rep., 775). Farmers Bank *v.* Hunter (57 Pac. Rep., 424). Rugh *v.* Ottenheimer (6 Or. Rep., 231). Rammillard *v.* Prescott (8 Or. Rep., 38). Bruce *v.* Phoenix Ins. Co. (34 Pac. Rep., 16). Bays *v.* Trulson (35 Pac. Rep., 245). Heatherly *v.* Hadley (2 Or. Rep., 269). Hammer v. Downing (64 Pac. Rep., 651). Steamer Senorita *v.* Simons (1 Or. Rep., 274). Konigsberger *v.* Harvey (7 Pac. Rep., 114; Gee *v.* Culver (6 Pac. Rep., 775). Baines *v.* Coos Bay R. & E. R. & N. Co. (68 Pac. Rep., 397). Duff *v.* Willamette I. & S. Wks. (78 Pac. Rep., 363, 668). Tucker *v.* N. P. Terminal Co. (68 Pac. Rep., 426). Baker County *v.* Huntingon (79 Pac. Rep., 187). Moores *v.* Clackamas County (67 Pac. Rep., 662). Steiger *v.* Fronhofer (72 Pac. Rep., 693). Brown *v.* Feldwert (80 Pac. Rep., 414). Springer *v.* Jenkins (84 Pac. Rep., 479). Neis *v.* Whittaker (84 Pac. Rep., 699). Haun *v.* Martin (86 Pac. Rep., 371).

*Negligence*: Kahn *v.* Love (3 Or. Rep., 206). Johnston *v.* Oreg. S. L. R. Co. (31 Pac. Rep., 283). Grant *v.* Baker (7 Pac. Rep., 318).

*Partial defenses*: Webb *v.* Nickerson (4 Pac. Rep., 1126). Case T. M. Co. *v.* Campbell (13 Pac. Rep., 324). U S *v.* Ordway (30 Fed. Rep., 32).

*Plea in abatement*: Hopwood *v.* Patterson (2 Or. Rep., 50). Oregon C. R. Co. *v.* Scoggin (3 Or. Rep., 162). Christian *v.* City of Eugene (89 Pac. Rep., 419). Gilman *v.* Cochran (90 Pac. Rep., 1001.

*Waiver of objection*: McClung *v.* McPherson (82 Pac. Rep., 13).

Nature of counterclaim, and how stated.

SEC. 896. The counterclaim mentioned in the last preceding section must be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action:

First. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim.

Second. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.

Carter Code, sec. 64; Charlton Code, sec. 64.

Bennett *v.* Forest (69 Fed. Rep., 421; 1 Alaska Rep., 722). Thomson *v.* Burk (2 Alaska Rep., 256). Elliott *v.* Kuzek (2 Alaska Rep., 587). Fish *v.* First Nat. Bank (157 Fed. Rep., 87). Lorentzen *v.* Warner (3 Alaska Rep., 220). Kuzek *v.* Magaha (148 Fed. Rep., 618; 78 C. C. A., 465.

*Generally*: Waite *v.* Wheeler & Wilson Mfg. Co. (31 Pac. Rep., 661). Davenport *v.* Dose (67 Pac. Rep., 112). Burrage *v.* Bonanza, etc., Mining Co. (6 Pac. Rep., 766). Coleman *v.* Elmore (31 Fed. Rep., 392). McDonald *v.* McKenzie (14 Pac. Rep., 868). Richmond *v.* Bloch (60 Pac. Rep., 388). Farmers Bank *v.* Hunter (57 Pac. Rep., 424). Lowenberg *v.* Rosenthal (22 Pac. Rep., 601). Miser *v.* O'Shea (62 Pac. Rep., 491). Steiger *v.* Fronhofer (72 Pac. Rep., 693). Le Clare *v.* Thibault (69 Pac. Rep., 552). Fleishman *v.* Meyer (80 Pac. Rep., 209). Cohn *v.* Wemme (81 Pac. Rep., 981). Wheelan *v.* McMahon (82 Pac. Rep., 19). Louie Chung *v.* Stevenson (89 Pac. Rep., 386). Dutro *v.* Ladd (91 Pac. Rep., 459). Merrill *v.* Hexter (94 Pac. Rep., 972).

*Arising out of transactions set forth*: Lowenburg *v.* Rosenthal (22 Pac. Rep., 601). Miser *v.* O'Shea (62 Pac. Rep., 491). Wait *v.* Wheeler & Wilson Mfg. Co. (31 Pac. Rep., 661). Scheiffelin *v.* Weatherred (23 Pac. Rep., 898). Foss *v.* Newberry (25 Pac. Rep., 669). Gove *v.* Milling Co. (17 Pac. Rep., 740). Davis *v.* Wait (8 Pac. Rep., 356). Burrage *v.* Bonanza Min. Co. (6 Pac. Rep., 766). Smith *v.* Turner (54 Pac. Rep., 166). Zigler *v.* McClellan (16 Pac. Rep., 179). Farmers Bank *v.*

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Hunter (57 Pac. Rep., 424). Farmers Bank *v.* Woodell (61 Pac. Rep., 837). Kiernan *v.* Terry (38 Pac. Rep., 671). Coos Bay R. Co. *v.* Nosler (48 Pac. Rep., 361).

*Actions arising on contract*: Rayburn *v.* Hurd (25 Pac. Rep., 635). Walt *v.* Wheeler & Wilson Mfg. Co. (31 Pac. Rep., 661).

*Joinder of defenses*: Hopwood *v.* Patterson (2 Or. Rep., 50). Oreg. Cent. R. Co. *v.* Walt (3 Or. Rep., 428). Dowell *v.* Cardwell (3 Saw. Rep., 217). Chapman *v.* School Dist. (1 Deady Rep., 116). Veasey *v.* Humphries (41 Pac. Rep., 8). McDonald *v.* Amer. Mtg. Co. (21 Pac. Rep., 883). Maxwell *v.* Bolles (41 Pac. Rep., 661). Snodgrass *v.* Andross (23 Pac. Rep., 696). Dove *v.* Hayden (5 Or. Rep., 503). Moore *v.* Willamette Trans. Co. (7 Or. Rep., 355). Hindman *v.* Edgar (17 Pac. Rep., 862). Oreg. R. Co. *v.* O. R. & N. Co. (27 Fed. Rep., 278). Gardner *v.* McWilliams (69 Pac. Rep., 915). Fleishman *v.* Meyer (80 Pac. Rep., 209). Leclare *v.* Thibault (69 Pac. Rep., 552). Randall *v.* Simmons (67 Pac. Rep., 513).

NOTE.—As to counterclaim in equity see sec. 1200, chap. 38 of this title.

The defendant may demur to one or more of several causes of action and answer the rest.

SEC. 897. The defendant may demur to one or more of several causes of action stated in the complaint and answer the residue.

Carter Code, sec. 65; Charlton Code, sec. 65.

Sham and irrelevant answers stricken out on motion.

SEC. 898. Sham, frivolous, and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

Carter Code, sec. 66; Charlton Code, sec. 66.

The *Oregon* (116 Fed. Rep., 482; 53 C. C. A., 650; 1 Alaska Rep., 689). Ebner *v.* Heid (2 Alaska Rep., 600). Torrence *v.* Strong (4 Or. Rep., 39). Foren *v.* Dealey (4 Or. Rep., 92). The *Victorian* (32 Pac. Rep., 1040). Miser *v.* O'Shea (62 Pac. Rep., 491). Oregonian R. Co. *v.* O. R. & N. Co. (10 Saw. Rep., 464; 22 Fed. Rep., 249). Krewson *v.* Purdum (3 Pac. Rep., 822). Holman *v.* De Lin (47 Pac. Rep., 708). Brown *v.* Baker (65 Pac. Rep., 801). Randall *v.* Simmons (67 Pac. Rep., 513). Pac. Milling Co. *v.* Inman, Poulsen & Co. (90 Pac. Rep., 1099). Swank *v.* Elwert (105 Pac. Rep., 901).

## CHAPTER NINE.

### OF THE REPLY.

Sec.
899. Reply, when made, and what to contain.
900. When plaintiff may demur to new matter in answer.
901. When defendant may move for judgment on answer.
902. When defendant may demur to reply.

June 6, 1900.
31 Stat. L., 343.
R. S., 2d Supp., p. 1216.
Reply, when made and what to contain.

SEC. 899. When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

Carter Code, sec. 67; Charlton Code, sec. 67.

Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 728). Brosnan *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671). Benicia Agric. Wks. *v.* Creighton (28 Pac. Rep., 775). Larson *v.* O. R. & N. Co. (23 Pac. Rep., 974). Wyatt *v.* Henderson (48 Pac. Rep., 790). Mayes *v.* Stevens (63 Pac. Rep. 760). Cedarson *v.* Oreg. Nav. Co. (62 Pac. Rep., 637; 63 Pac. Rep., 763). Lillienthal *v.* Hotaling Co. (15 Pac. Rep., 630). Lavery *v.* Arnold (58 Pac. Rep., 524). Crown Cycle Co. *v.* Brown (64 Pac. Rep., 451). Hammer *v.* Downing (64 Pac. Rep., 651). Van Bibber *v.* Fields (36 Pac. Rep., 526). Union St. R. Co. *v.* First Nat. Bank (72 Pac. Rep., 586). Zorn *v.* Livesley (75 Pac. Rep., 1057). Patterson *v.* Patterson (67 Pac. Rep., 664). Kabat *v.* Moore (85 Pac. Rep., 506). Haines *v.* Connell (87 Pac. Rep., 265). Eldriedge *v.* Hoover (94 Pac. Rep., 563). Pioneer Hdwe. Co. *v.* Farrier (107 Pac. Rep., 456).

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When plaintiff may demur to new matter in answer.

SEC. 900. The plaintiff may demur to an answer containing new matter when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim; or he may, for like cause, demur to one or more of such defenses or counterclaims and reply to the residue.

Carter Code, sec. 68; Charlton Code, sec. 68.

Held *v.* Ebner (133 Fed. Rep., 156; 66 C. C. A., 222; 2 Alaska Rep., 727). Shields *v.* Mongollon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 728). Piper *v.* Cashell (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 672). Tobey *v.* Ferguson (3 Or. Rep., 29). Torrence *v.* Strong (4 Or. Rep., 45). Tolmie *v.* Otchin (1 Or. Rep., 95). Leedy *v.* Wood (88 Pac. Rep., 585). Sutherlin *v.* Bloomer (93 Pac. Rep., 136). Multnomah County *v.* Failing (104 Pac. Rep., 964).

When defendant may move for judgment on answer.

SEC. 901. If the answer contain a statement of new matter, constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law or rule of the court, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

Carter Code, sec. 69; Charlton Code, sec. 69.

Brosnan *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671). Walton *v.* Wild Goose Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 728). Curry *v.* S. P. Co. (31 Pac. Rep., 964). Benecia Agric. Wks. *v.* Creighton (28 Pac. Rep., 775). Wallace *v.* Baisley (30 Pac., 432). Willis *v.* Holmes (42 Pac. Rep., 989). Watkins *v.* S. P. Co. (38 Fed. Rep., 712). Dowles *v.* Doble (5 Pac. Rep., 918). Maffett *v.* Or. & C. R. Co. (80 Pac. Rep., 489). Pac. Mill Co. *v.* Inman Poulsen Co. (90 Pac. Rep., 1099).

When defendant may demur to reply.

SEC. 902. The defendant may demur to any new matter contained in the reply when it appears upon the face thereof that such matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defenses.

Carter Code, sec. 70; Charlton Code, sec. 70.

Bronson *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671). Ebner *v.* Heid (2 Alaska Rep., 603).

## CHAPTER TEN.

### OF THE GENERAL RULES OF PLEADING.


Sec.
903. Verification of pleadings.
904. When verification may be omitted.
905. When pleadings filed, motion to strike out.
906. Manner of pleading an account.
907. How pleadings construed.
908. Irrelevant and redundant matter may be stricken out.
909. Judgments, how pleaded.
910. Conditions precedent, how pleaded.
911. Private statute, how pleaded.
912. City ordinance, how pleaded.
913. Libel or slander, how pleaded.
914. What may be pleaded in answer in such cases.
915. Answer in action to recover the possession of property distrained.
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917. Material allegation not denied to be deemed true.
918. What is material allegation.


June 6, 1900.
31 Stat. L., 343–345.
R. S., 2d Supp., pp. 1217–1219.
Verification of pleadings.

SEC. 903. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one, at least, of such parties, if such parties be within the district and capable of making the affidavit; otherwise the affidavit may be made by the

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agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof upon whom service of a summons might be made, and when the United States, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

Carter Code, sec. 71; Charlton Code, sec. 71.

Rogers *v.* De Soto Placer Min. Co. (136 Fed. Rep., 407; 69 C. C. A., 251; 2 Alaska Rep., 651).
*Subscription*: State *v.* Brown (10 Or. Rep., 423).
*Verification*: State *v.* Brown (10 Or. Rep., 423). Robbins *v.* Benson (6 Pac. Rep., 69). Blanchard *v.* Bennett (1 Or. Rep., 328). West *v.* Home Ins. Co. (18 Fed. Rep., 623). Str. Senorita *v.* Simons (1 Or. Rep., 274). State *v.* Luper (95 Pac. Rep., 811).

NOTE.—As to verification of pleadings by public corporation, see sec. 1167, chap. 35, of this title.
As to verification of pleadings for usurpation of office, etc., see sec. 1173, chap. 36, of this title.

When verification may be omitted.

SEC. 904. When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a prosecution for felony, the verification of the answer to such allegation may be omitted.

Carter Code, sec. 72; Charlton Code, sec. 72.
State *v.* Wilton (5 Pac. Rep., 337).

When pleadings filed.

SEC. 905. The answer or demurrer to the complaint shall be filed with the clerk by the time required to answer, and the demurrer, or reply thereto, as the case may be, must in like manner be filed by the first day of the next term of the court, or within such time as the court may allow after the filing of the answer to the complaint, if the same be filed in term time. A demurrer to a reply must be filed in the manner and within the time required to file a demurrer to an answer. A motion to strike out a pleading for want of verification or subscription, or because several causes of action or defense therein are not pleaded separately, or for other cause, or a sham, frivolous, or irrelevant pleading or redundant matter therein, shall be made within the time for answering such pleading.

—motion to strike out.

Carter Code, sec. 73; Charlton Code, sec. 73.

Moore *v.* Willamette T. & L. Co. (7 Or. Rep., 359). Fleishman *v.* Meier (80 Pac. Rep., 209). Harvey *v.* S. P. Co. (80 Pac. Rep., 1061). Mulkey *v.* Day (89 Pac. Rep., 957).

Manner of pleading an account.

SEC. 906. A party may set forth in a pleading the items of an account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

Carter Code, sec. 74; Charlton Code, sec. 74.

Robbins *v.* Benson (6 Pac. Rep., 69). Parker *v.* Monteith (7 Or. Rep., 281). Flanders *v.* Ish (2 Or. Rep., 320). Reyburn *v.* Hurd (25 Pac. Rep., 635). Davis *v.* Hofer (63 Pac. Rep., 56). Fleishner *v.* Kubli (25 Pac. Rep., 1086). Crawford *v.* Hutchinson (65 Pac. Rep., 85). Howell *v.* Johnson (64 Pac. Rep., 659). Silva *v.* Blair (75 Pac. Rep., 162). Raski *v.* Wise (107 Pac. Rep., 984).



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How pleadings construed.

SEC. 907. In the construction of a pleading for the purpose of determining its effect, its allegation shall be liberally construed, with a view of substantial justice between the parties.

Carter Code, sec. 75; Charlton Code, sec. 75.

Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 727). Heid *v.* Ebner (133 Fed. Rep., 156; 66 C. C. A., 222; 2 Alaska Rep., 727). Hinds *v.* Tanana Min. R. Co. (3 Alaska Rep., 379). Kohn *v.* Hinshaw (20 Pac. Rep., 629). Pursel *v.* Deal (18 Pac. Rep. 461). Jackson *v.* Jackson (19 Pac. Rep., 847). Houghton *v.* Back (9 Or. Rep., 326). West *v.* Eli (65 Pac. Rep., 798). Patterson *v.* Patterson (67 Pac. Rep., 664). Corbett *v.* Wrenn (35 Pac. Rep., 658). Willer *v.* O. R. & N. 13 Pac. Rep., 768). Miller *v.* Hirschberger (40 Pac. Rep., 506). Wyatt *v.* Wyatt (49 Pac. Rep., 855). McKay *v.* Musgrove (13 Pac. Rep., 770). Wollenberg *v.* Minard (62 Pac. Rep., 532). Crossen *v.* Grande (70 Pac. Rep., 906). State *v.* Malheur County (81 Pac. Rep., 368). Goodnough Merch. Co. *v.* Galloway (84 Pac. Rep., 1049).

Irrelevant and redundant matter may be stricken out.

SEC. 908. If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Carter Code, sec. 76; Charlton Code, sec. 76.

Ebner *v.* Heid (2 Alaska Rep., 600). White *v.* Allen (3 Or. Rep., 103). The *Victorian* (32 Pac. Rep., 1040). Cline *v.* Cline (3 Or. Rep., 356). Krewson *v.* Purdum (3 Pac. Rep., 822). Farris *v.* Hayes (9 Or. Rep., 87). Holbrook *v.* Page (3 Or. Rep., 374). Corbett *v.* Wrenn (35 Pac. Rep., 658). Thomas *v.* Herrall (23 Pac. Rep., 497). Castow *v.* Murray (81 Pac. Rep., 883). Neis *v.* Whittaker (84 Pac. Rep., 699). State *v.* Richardson (85 Pac. Rep., 225). Brownell *v.* Salem Flouring Mill Co. (87 Pac. Rep., 770). High *v.* S. P. Co., 88 Pac. Rep., 961). Swank *v.* Elwert (105 Pac. Rep., 901).

*Motion to make certain and definite*: Houghton *v.* Beck (9 Or. Rep., 326). Jackson *v.* Jackson (19 Pac. Rep., 847). Neis *v.* Yocum (16 Fed. Rep., 172). U. S. *v.* O. R. & N. Co. (16 Fed. Rep., 529). Freeksen *v.* Turner (23 Pac. Rep., 857). Osburn *v.* Graves (6 Pac. Rep., 227). McKay *v.* Musgrove (13 Pac. Rep., 770). Kabat *v.* Moore (85 Pac. Rep., 506). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 389). Mulnomah County *v.* Failing (104 Pac. Rep., 964).

Judgments, how pleaded.

SEC. 909. In pleading a judgment or other determination of a court or officer of special jurisdiction it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Carter Code, sec. 77; Charlton Code, sec. 77.

Page *v.* Smith (10 Pac. Rep., 833). White *v.* Espey (28 Pac. Rep., 71). Willitts *v.* Walter (52 Pac. Rep., 24). Fisher *v.* Kelly (46 Pac. Rep., 146). Rutenic *v.* Hamaker (67 Pac. Rep., 198). Tobey *v.* Ferguson (3 Or. Rep., 28). Bewley *v.* Graves (20 Pac. Rep., 322). Ashley *v.* Pick (100 Pac. Rep., 1103). Willett *v.* Kinney (104 Pac. Rep., 719).

Conditions precedent, how pleaded.

SEC. 910. In pleading the performance of a condition precedent in a contract it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted the party pleading shall be bound to establish on the trial the facts showing such performance.

Carter Code, sec. 78; Charlton Code, sec. 78.

Long Creek B. Assn. *v.* State Ins. Co. (46 Pac. Rep., 366). Fisk *v.* Henarie (9 Pac. Rep., 322). Griffin *v.* Pitman (8 Or. Rep., 343). Hawley *v.* *v.* State Ins. Co. (24 Pac. Rep. 242). Bingham (6 Or. Rep., 77). Weldert *v.* Hannan *v.* Greenfield (58 Pac. Rep., 888). Durkee *v.* Carr (63 Pac. Rep., 117). McInnis *v.* Buchanan (99 Pac. Rep., 929). Tongue *v.* State Bd. Agriculture (105 Pac. Rep., 250). Noyes *v.* Marlott (156 Fed. Rep., 753).

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Private statute, how pleaded.

SEC. 911. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Carter Code, sec. 79; Charlton Code, sec. 79.

City ordinance, how pleaded.

SEC. 912. In pleading an ordinance or enactment of any incorporated city, town, or village, or a right derived therefrom, in any action or proceeding, it shall be sufficient to refer to such ordinance or enactment by its title and the day of its approval, and the court shall thereupon take judicial notice thereof.

Carter Code, sec. 80; Charlton Code, sec. 80.

Pomeroy *v.* Lappeus (9 Or. Rep., 363). Nodine *v.* City of Union (11 Pac. Rep., 398). Woods *v.* Town of Pineville (23 Pac. Rep., 880). Mayhew *v.* City of Eugene (104 Pac. Rep., 727).

Libel or slander, how pleaded.

SEC. 913. In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted the plaintiff shall be bound to establish on trial that it was so published or spoken.

Carter Code, sec. 81; Charlton Code, sec. 81.

Cole *v.* Neustadter (29 Pac. Rep., 550). State *v.* Mason (28 Pac. Rep., 130). Wooley *v.* Plain Dealer Pub. Co. (84 Pac. Rep., 473).

What may be pleaded in answer in such cases.

SEC. 914. In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not he may give in evidence the mitigating circumstances.

Carter Code, sec. 82; Charlton Code, sec. 82.

Upton *v.* Hume (33 Pac. Rep., 810).

Answer in action to recover the possession of property distrained.

SEC. 915. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property.

Carter Code, sec. 83; Charlton Code, sec. 83.

What causes of action may be united in same complaint.

SEC. 916. The plaintiff may unite several causes of action in the same complaint when they all arise out of—

First. Contract, express or implied; or

Second. Injuries, with or without force, to the person; or

Third. Injuries, with or without force, to property; or

Fourth. Injuries to character; or

Fifth. Claims to recover real property, with or without damages for the withholding thereof; or

Sixth. Claims to recover personal property, with or without damages for the withholding thereof; or

Seventh. Claims against a trustee by virtue of a contract or by operation of law.

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But the causes of action so united must all belong to one only of these classes, and must affect all the parties to the action and not require different places of trial, and must be separately stated.

Carter Code, sec. 84; Charlton Code, sec. 84.

Kimball *v.* Miller (1 Alaska Rep., 351). Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494; 2 Alaska Rep., 637). Alaska Comm. Co. *v.* Dabney (2 Alaska Rep., 303). Hayden *v.* Pearce (52 Pac. Rep., 1049). Corbett *v.* Wrenn (35 Pac. Rep., 658). Waggy *v.* Scott (45 Pac. Rep., 774). The *Victorian No. 2* (41 Pac. Rep., 1103). Oregonian R. Co. *v.* O. R. & N. Co. (28 Fed. Rep., 513). Smith *v.* Day 65 Pac. Rep., 1055). Hardenburg *v.* Ray (33 Fed. Rep., 814). Savage *v.* Salem Mills Co. (85 Pac. Rep., 69). Tillamook County *v.* Wilson River Road Co. (89 Pac. Rep., 958). Bade *v.* Hibberd (93 Pac. Rep., 364).

Material allegation not denied to be deemed true.

SEC. 917. Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party as upon a direct denial or the avoidance, as the case may require.

Carter Code, sec. 85; Charlton Code, sec. 85.

Benicia Agric. Wks. *v.* Creighton (28 Pac. Rep., 775). Wallace *v.* Baisley (30 Pac. Rep., 432). Simpson *v.* Prather (3 Or. Rep., 89). Larson *v.* O. R. & N. Co. (23 Pac. Rep., 974). Dillery *v.* Borwick (59 Pac. Rep., 183). Capital Lbr. Co. *v.* Learned (59 Pac. Rep., 454). Winsor *v.* Collinson (52 Pac. Rep., 26). Davenport *v.* Dose (67 Pac. Rep., 112). Cogswell *v.* Wilson (4 Pac. Rep., 1130). State *v.* Lavery (49 Pac. Rep., 852).

What is material allegation.

SEC. 918. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient as to such claim or defense.

Carter Code, sec. 86; Charlton Code, sec. 86.

Miller *v.* Margerie (149 Fed. Rep., 694). Moody *v.* Richards (45 Pac. Rep., 777). Fisher *v.* Kelly (46 Pac. Rep., 146). Hannan *v.* Greenfield (58 Pac. Rep., 888).

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# CHAPTER ELEVEN.

## OF MISTAKES IN PLEADINGS AND AMENDMENTS.


Sec.
919. When variance deemed material.
920. When variance not material.
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R. S., 2d Supp., pp. 1219–1220.

When variance deemed material.

SEC. 919. No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the

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court may order the pleading to be amended upon such terms as shall be just.

Carter Code, sec. 87; Charlton Code, sec. 87.

Black *v.* Teeter (1 Alaska Rep., 564). Dettering *v.* Nordstrom (148 Fed. Rep., 81; 78 C. C. A., 157).

*Variances*: Knathley *v.* Or. S. L. R. Co. (27 Pac. Rep., 91). Troy Ldry Co. *v.* Henry (31 Pac. Rep., 484). Lienallen *v.* Musgrove (54 Pac. Rep., 200). Woodward *v.* O. R. & N. Co. (22 Pac. Rep., 1076). Jones *v.* Portland (58 Pac. Rep., 657). Wild *v.* Or. S. L. R. Co. (27 Pac. Rep., 954). Weidart *v.* State Ins. Co. (24 Pac. Rep., 242). Long Creek B. S. Assn. *v.* State Ins. Co. (46 Pac. Rep., 366). Hannan *v.* Greenfield (58 Pac. Rep., 888). Simons *v.* Wrightman (58 Pac. Rep., 1100). Swank *v.* Swank (61 Pac. Rep., 846). Hunniman *v.* Or. & C. R. Co. (10 Pac. Rep., 628). Thompson *v.* Rathbun (22 Pac. Rep., 837). Hendy *v.* Pac. Cable Co. (29 Pac. Rep., 168). Hill *v.* Mellon (3 Or. Rep., 542). Davidson *v.* Or. & C. R. Co. (1 Pac. Rep., 705). Henderson *v.* Morris (5 Or. Rep., 26). Brown *v.* Moore (3 Or. Rep., 438). Kitchen *v.* Holmes (70 Pac. Rep., 830). Lazelle *v.* Miller (67 Pac. Rep., 307). Durning *v.* Walz (71 Pac. Rep., 662). Robinson *v.* Taku Fish Co. (71 Pac. Rep., 790).

*Material variance*: Hill *v.* Mellon (3 Or. Rep., 542). Dodd *v.* Denney (6 Or. Rep., 158). Moore *v.* Frazer (16 Pac. Rep., 869). Stokes *v.* Brown (26 Pac. Rep., 561). Creecy *v.* Joy (66 Pac. Rep., 295). Delsman *v.* Friedlander (66 Pac. Rep., 297). Baker *v.* State Ins. Co. (48 Pac. Rep., 699). Denn *v.* Peters (59 Pac. Rep., 1109). Sabin *v.* Mitchell (39 Pac. Rep., 635). Osborn *v.* Logus (42 Pac. Rep., 997). Heran *v.* Or. Tel. Co. (33 Pac. Rep., 403). West *v.* Ell (65 Pac. Rep., 798). McMahon *v.* Can. Pac. R. Co. (66 Pac. Rep., 708). Young *v.* Stickney (79 Pac. Rep., 345). Maynard *v.* Or. R. Co. (72 Pac. Rep., 590). Adcock *v.* O. R. & N. Co. (77 Pac. Rep., 78). Thayer *v.* Buchanan (79 Pac. Rep., 343). Kelsay *v.* Taylor (107 Pac. Rep., 609).

*Practice*: Thompson *v.* Rathbun (22 Pac. Rep., 837). Denn *v.* Peters (59 Pac. Rep., 1109). West *v.* Ell (65 Pac. Rep., 798). Simons *v.* Wrightman (58 Pac. Rep., 1100). Hill *v.* Mellon (3 Or. Rep., 542). Dodd *v.* Denney (6 Or. Rep., 158). Moore *v.* Frazer (16 Pac. Rep., 869). Mendenhall *v.* Harrisburg Water Co. (39 Pac. Rep., 399). Bishop *v.* Baisley (41 Pac. Rep., 937).

When variance not material.

SEC. 920. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Carter Code, sec. 88; Charlton Code, sec. 88.

Black *v.* Teeter (1 Alaska Rep., 564). Henderson *v.* Morris (5 Or. Rep., 27). Stokes *v.* Brown (26 Pac. Rep., 561). Denn *v.* Peters (59 Pac. Rep., 1109).

What deemed a failure of proof.

SEC. 921. When, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Carter Code, sec. 89; Charlton Code, sec. 89.

Ahern *v.* Or. Tel. Co. (33 Pac. Rep., 403). Stokes *v.* Brown (26 Pac. Rep., 561). Thompson *v.* Rathbun (22 Pac. Rep., 837). Pearce *v.* Buell (29 Pac. Rep., 78). Kincaid *v.* Or. S. L. R. Co. (29 Pac. Rep., 253).

What pleading may be amended of course.

SEC. 922. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such case a copy of the amended pleading shall be served on the adverse party before the expiration of said period.

Carter Code, sec. 90; Charlton Code, sec. 90.

Goodale *v.* Coffey (33 Pac. Rep., 990). Wells *v.* Applegate (6 Pac. Rep., 770). Nodine *v.* Richmond (87 Pac. Rep., 775).

Amendments and pleading over after demurrer.

SEC. 923. After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the

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court may, in its discretion, allow the party to plead over, upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to, upon such terms as may be proper.

Carter Code, sec. 91; Charlton Code, sec. 91.

Miocene Ditch Co. *v.* Lyng (138 Fed. Rep., 544; 70 C. C. A., 458; 2 Alaska Rep., 730). Powell *v.* Dayton S. & G. R. R. Co. (12 Pac. Rep., 665). Fowle *v.* House (47 Pac. Rep., 787). State *v.* Metschan (53 Pac. Rep., 1071). Lieuallen *v.* Musgrove (54 Pac. Rep., 200). McLeod *v.* Lloyd (74 Pac. Rep., 491). Rutenic *v.* Hamakar (67 Pac. Rep., 196). Goodnough Merch Co. *v.* Galloway (84 Pac. Rep., 1044). Sears *v.* Dunbar (91 Pac. Rep., 145). Rockwood *v.* Grout (106 Pac. Rep., 789). Copper River & N. W. R. Co. *v.* Phillips (196 Fed. Rep., 328).

Amendments allowed by court before trial or submission.

SEC. 924. The court may, at any time before trial, in furtherance of justice, and upon such terms as may be proper, allow any pleading or proceeding to be amended by adding the name of a party, or other allegation material to the cause, and in like manner and for like reasons it may, at any time before the cause is submitted, allow such pleading or proceeding to be amended, by striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or when the amendment does not substantially change the cause of action or defense, by conforming the pleading or proceeding to the facts proved.

Carter Code, sec. 92; Charlton Code, sec. 92.

Alaska Comm Co. *v.* Williams (128 Fed. Rep., 362; 63 C. C. A., 92; 2 Alaska Rep., 730). Willamette Tent & Awning Co. *v.* West Coast Groc. Co. (2 Alaska Rep., 4, 5). Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A., 459; 2 Alaska Rep., 730). First Nat. Bank *v.* Fish (2 Alaska Rep., 350). U. S. *v.* Mosely (8 Fed. Rep., 688; 1 Alaska Rep., 689). Dabney *v.* Iles (3 Alaska Rep., 447). Nowell *v.* Behrends (3 Alaska Rep., 496). Ridings *v.* Marion County (91 Pac. Rep., 22). Sears *v.* Dunbar (91 Pac. Rep., 145). Roots *v.* Boring Jct. Lbr. Co. (92 Pac. Rep., 811). Hoogendorn *v.* Daniel (178 Fed. Rep., 765). Henderson *v.* Morris (5 Or. Rep., 24). Hexter *v.* Snyder (12 Pac. Rep., 668). Bowles *v.* Doble (5 Pac. Rep., 918). Foster *v.* Henderson (45 Pac. Rep., 898). Gerrison *v.* Goodale (31 Pac. Rep., 709). Wallace *v.* Baisley (30 Pac. Rep., 432). Davis *v.* Hannan (46 Pac. Rep., 785). Osman *v.* Winters (46 Pac. Rep., 780). Lieuallen *v.* Musgrove (61 Pac. Rep., 1022). Watson *v.* Buckler (45 Pac. Rep., 765). Christensen *v.* Nelson (63 Pac. Rep., 648). Branton *v.* Oregonian R. Co. (2 Pac. Rep., 86). Baldock *v.* Atwood (26 Pac. Rep., 1058). Swift *v.* Mulkey (12 Pac. Rep., 76. Saylor *v.* Comm. Bank Co. (62 Pac. Rep., 652). Talbot *v.* Garretson (49 Pac. Rep., 978). Foste *v.* Std. Ins. Co. (38 Pac. Rep., 617). Liggett *v.* Ladd (31 Pac. Rep., 81. Koshland *v.* Fire Assn. (49 Pac. Rep., 865). Miller *v.* Lynch (19 Pac. Rep., 845). Hammer *v.* Downing (64 Pac. Rep., 651). Cook *v.* Croisan (36 Pac. Rep., 532). Mendenhall *v.* Harrisburg Water Co. (39 Pac. Rep., 399). Bishop *v.* Baisley (41 Pac. Rep., 937). Bailey *v.* Wilson (55 Pac. Rep., 973). Farmers Bank *v.* Saling (54 Pac. Rep., 190). Wade *v.* City R. Co. (59 Pac. Rep., 875). Wild *v.* Or. S. L. R. Co. (27 Pac. Rep., 954). Nunn *v.* Bird (59 Pac. Rep., 808). Cooper *v.* Blair (12 Pac. Rep., 370). Hume *v.* Kelly (43 Pac. Rep., 380). Tillamook Dairy Assn. *v.* Schermerhorn (51 Pac Rep., 438). State *v.* Downing (66 Pac. Rep., 918). Wells *v.* Applegate (6 Pac. Rep., 770). Hume *v.* Woodward (38 Pac. Rep., 191). Davidson *v.* O. & C R. Co. (1 Pac. Rep., 705). Sucksdorff *v.* Bigham (12 Pac. Rep., 818). Clemons *v.* Hanley (41 Pac. Rep., 658). York *v.* Nash (71 Pac. Rep., 59). Lazelle *v.* Miller (67 Pac. Rep., 307). Good *v.* Smith (76 Pac. Rep., 354). Brown *v.* Feldwert (80 Pac. Rep., 414). Male *v.* Schaut (69 Pac. Rep., 137). Nye *v.* Bill Nye G. M. & M. Co. (80 Pac. Rep., 94). Strauhal *v.* Asiatic S. S. Co. (85 Pac. Rep., 230). State *v.* Richardson (85 Pac. Rep., 225) Haywood Bros. & Wakefield Co. *v.* Doernbecher Mfg. Co. (86 Pac. Rep., 357). Taylor *v.* Brown (90 Pac. Rep., 1145). Longfellow *v.* Huffman (90 Pac. Rep., 907). Pac. Mill Co. *v.* Inman Poulson & Co. (90 Pac. Rep., 1099). Scott *v.* Ford (97 Pac. Rep., 99).

*Amendments of, at trial*: N. W. S. S. Co. *v.* Griggs (146 Fed. Rep., 472; 77 C. C. A., 28). Levy *v.* Larson (167 Fed. Rep., 110; 92 C. C. A., 562).

*Of judgment*: Cascaden *v.* Dunbar (3 Alaska Rep., 671).

*Of record on appeal*: McKay *v.* Neussler (148 Fed. Rep., 86; 78 C. C. A., 154). Hemple *v.* Raymond (144 Fed. Rep., 796; 75 C. C. A., 526).

*Appealibility of order*: Miocene Ditch Co. *v.* Moore (150 Fed. Rep., 483; 80 C. C. A., 301).

*Of statute*: Town of Nome *v.* Snyder (3 Alaska Rep., 58).

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Court may enlarge time to plead, or relieve party from judgment.

SEC. 925. The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this code, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

Carter Code, sec. 93; Charlton Code, sec. 93.

Lindblom *v.* Kidston (2 Alaska Rep., 292). Banks *v.* Wilson (1 Alaska Rep., 243). Daly *v.* Gardner (1 Alaska Rep., 357). Marz & Weiss *v.* Valentine (1 Alaska Rep., 28). Alaska United Gold Mining Co. *v.* Keating (116 Fed. Rep., 561; 53 C. C. A., 655; 1 Alaska Rep., 832). Logan *v.* Columbia Canning Co. (2 Alaska Rep., 559). Bonnifield *v.* Thorp (71 Fed. Rep., 924; 1 Alaska Rep., 768). Nelson *v.* Meehan (2 Alaska Rep., 491, 492). Marx *v.* Brown, Judge (136 Fed. Rep., 168; 69 C. C. A., 80; 2 Alaska Rep., 693). Miocene Ditch Co. *v.* Moore (150 Fed. Rep., 483; 80 C. C. A., 301). Miocene Ditch Co. *v.* Campion M. & T. Co. (150 Fed., 483; 80 C. C. A., 301). Decker Bros. *v.* Berner's Bay Min. Co. (3 Alaska Rep., 297). Dabney *v.* Ile (3 Alaska Rep., 447).

*Vacating judgment*: Deering *v.* Quivey (38 Pac. Rep., 710). Alexander *v.* Lyng (50 Pac. Rep., 915). Henrichson *v.* Smith (44 Pac. Rep., 496). Ladd *v.* Mason (10 Or. Rep., 308). Stites *v.* McGee (61 Pac. Rep., 1129). Branson *v.* Oregonian R. R. Co. (10 Or. Rep., 278). Brand *v.* Baker (71 Pac Rep., 320). White *v.* Ladd (68 Pac. Rep., 739). McFarlane *v.* McFarlane (77 Pac. Rep., 837). Nye *v.* Bill Nye G. M. & M. Co. (80 Pac Rep., 94). Froebrich *v.* Lane (76 Pac. Rep., 351). Huffman *v.* Huffman (86 Pac. Rep., 593). Miller *v.* Strube (107 Pac. Rep., 467). Raski *v.* Wise (107 Pac. Rep., 984). Stivers *v.* Byrkett (108 Pac. Rep., 1014).

*Mistake, surprise, etc.*: Crabill *v.* Crabill (30 Pac. Rep., 320). White *v.* N. W. Stage Co. (5 Or. Rep., 103). Askran *v.* Squire (45 Pac. Rep., 779). Schneider *v.* Hutchinson (57 Pac. Rep., 324). Lovejoy *v.* Willamette Locks Co. (34 Pac. Rep., 660). Thomson *v.* Connell (48 Pac. Rep., 467). Coos Bay Nav. Co. *v.* Endicott (57 Pac. Rep., 61). Hanthorn *v.* Oliver (51 Pac. Rep., 440). Deering *v.* Quivey (38 Pac. Rep., 710). Hicklin *v.* McClear (24 Pac. Rep., 992). Weiss *v.* Mayer (32 Pac. Rep., 1025). Wilson *v.* Blakesley (13 Pac. Rep., 665). Smith *v.* Wilkins (51 Pac. Rep., 438). Tongue *v.* Brewster (58 Pac. Rep., 38). Stites *v.* McGee (61 Pac. Rep., 1129). Bonnifield *v.* Thorp (71 Fed. Rep., 924). Mitchell *v.* Campbell (13 Pac. Rep., 190). Kelly *v.* Pike (20 Pac. Rep., 645). Whalley *v.* Gould (40 Pac. Rep., 4). Shepperd *v.* Latourell (44 Pac. Rep., 1090). Willis *v.* Lance (43 Pac. Rep., 384, 487). Nicklan *v.* Robertson (42 Pac. Rep., 993). Durham *v.* Comm. Nat. Bank (77 Pac. Rep., 902). Bowman *v.* Holman 86 Pac. Rep., 792). Nelson *v.* Meehan (155 Fed. Rep., 1; 83 C. C. A., 597). Voorhees *v.* Geiser, Hendryx Inv. Co. (98 Pac. Rep., 324). McCoy *v.* Huntley (99 Pac Rep., 932). Dietzel *v.* Conroy (101 Pac. Rep., 215). White *v.* Brown (101 Pac. Rep., 900).

When defendant may be sued by fictitious name.

SEC. 926. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Carter Code, sec. 94; Charlton Code, sec. 94.

Amended pleadings before trial to be new pleadings.

SEC. 927. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself without reference to the original or any preceding amended one.

Carter Code, sec. 95; Charlton Code, sec. 95.

Wells *v.* Applegate (6 Pac. Rep., 770). Hume *v.* Woodruff (38 Pac. Rep., 191). Hexter *v.* Schneider (12 Pac. Rep., 668).

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Pleading not verified, or containing several causes of action or defense not separately stated, may be stricken out.

SEC. 928. Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading, or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

Carter Code, sec. 96; Charlton Code, sec. 96.

Mitchell *v.* Galen (1 Alaska Rep., 343). Kimball *v.* Miller (1 Alaska Rep., 349). Aetna *v.* Held (2 Alaska Rep., 600). McKay *v.* Campbell (1 Saw. Rep., 374). Cline *v.* Cline (3 Or. Rep., 355). Bade *v.* Hibberd (93 Pac. Rep., 364). State *v.* Portland G. E. Co. (95 Pac., 722). Multnomah County *v.* Faling (104 Pac. Rep., 964). Boelk *v.* Nolan (107 Pac. Rep., 689).

NOTE.—As to striking out for want of verification see secs. 904 and 905, chap. 10, ante.

As to striking out because different causes of action are not separately stated, see secs. 905 and 908, chap. 10, ante.

No error to be regarded unless it affect substantial rights.

SEC. 929. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.

Carter Code, sec. 97; Charlton Code, sec. 97.

Black *v.* Teeter (1 Alaska Rep., 565). First Nat. Bank *v.* Fish (2 Alaska Rep., 350). Alaska Untd. G. M. Co. *v.* Keating (116 Fed. Rep., 561; 53 C C. A., 655; 1 Alaska Rep., 695). Jackson v. U. S. (102 Fed. Rep., 472; 42 C. C. A., 452; 1 Alaska Rep., 697). Englestadt *v.* Dufresne, 116 Fed. Rep., 582; 54 C. C. A., 38; 1 Alaska Rep., 699).

*Immaterial error disregarded*: Henderson *v.* Morris (5 Or. Rep., 28). Gregory v. North Pass L. Co. (17 Pac. Rep., 143). Williams *v.* Culver (48 Pac. Rep., 365). Morse *v.* Odell (89 Pac. Rep., 139).

*Aider by verdict*: Nicolai *v.* Krimbel (43 Pac. Rep., 865). Foste *v.* Std. Ins. Co. (54 Pac. Rep., 311). Savage *v.* Savage (59 Pac. Rep., 461). Chan Sing *v.* Portland (60 Pac. Rep., 718). Rosberg R. Co. *v.* Nosler (60 Pac. Rep., 904). Currey *v.* Butcher (61 Pac. Rep., 631). Sayre *v.* Mohney (56 Pac. Rep., 526). Ferrara *v.* Parke (23 Pac. Rep., 883). Kitchen *v.* Holmes (70 Pac. Rep., 830). Turner *v.* Corbett (9 Or. Rep., 79). Booth *v.* Moody (46 Pac. Rep., 884). Wyatt *v.* Wyatt (49 Pac. Rep., 855). Hannan *v.* Greenfield (58 Pac. Rep., 888). Nye *v.* Bill Nye G. M. & M. Co. (71 Pac. Rep., 1043). Ferguson *v.* Reiger (73 Pac. Rep., 1040). Walker *v.* Harold (74 Pac. Rep., 705). Patterson *v.* Patterson (67 Pac. Rep., 664). Bingham *v.* Lipman Wolfe & Co. (67 Pac. Rep., 98). Creecy *v.* Joy (66 Pac. Rep., 295). In re Mendenhall's Will (73 Pac. Rep., 1033). Normile *v.* O. R. & N. Co. (69 Pac. Rep., 928). Hayes v. Horton (81 Pac. Rep., 386). Horn *v.* Utd. Security Co (81 Pac. Rep., 1009). Catlin *v.* Jones (85 Pac. Rep., 515). Madden *v.* Welsh (86 Pac. Rep., 2). Overbeck, Starr & Cooke Co. *v.* Roberts (87 Pac. Rep., 1225). Seffert *v.* N. P. R. Co. (88 Pac. Rep., 962). Scott *v.* Christensen (89 Pac. Rep., 376). Fisher *v.* G. W. Cone Lbr. Co. (89 Pac. Rep., 737). Brown *v.* Lewis (92 Pac. Rep., 1058). Hornefins *v.* Wilkinson (93 Pac. Rep., 474).

Supplemental pleadings.

SEC. 930. The plaintiff and defendant, respectively, may be allowed on motion to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply. Copies of all pleadings subsequent to the complaint must be served upon the adverse party or his attorney.

Carter Code, sec. 98; Charlton Code, sec. 98.

Nowell *v.* Behrends (3 Alaska Rep., 496). Bush *v.* Pioner Min. Co. (3 Alaska Rep., 612). Royal *v.* Royal (47 Pac. Rep., 828). O'Connor *v.* Van Hoy (45 Pac. Rep., 762). Robinson *v.* Carlon (55 Pac. Rep., 959). Hamlin *v.* Kinney (2 Or Rep., 92). Halliday *v.* Elliott (3 Or. Rep., 347). White *v.* Allen (3 Or. Rep., 103). Nicolai *v.* Krimbel (43 Pac., 865).

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# CHAPTER TWELVE.

## OF ARREST AND BAIL.

Sec.
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932. Proceeding to obtain an arrest.
933. Defendant may be discharged on bail or deposit.
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R. S., 2d Supp., pp. 1220–1224.

When defendant may be arrested.

SEC. 931. No person shall be arrested in any civil action at law except as provided in this section. The defendant may be arrested in the following cases:

First. In an action for the recovery of money or damages, when the defendant is about to remove from the district with intent to defraud his creditors, or when the action is for an injury to person, or for wilfully injuring or wrongfully taking, detaining, or converting property.

Second. In an action for a fine or penalty, or for money, or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

Third. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the marshal, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

Fourth. When the defendant has been guilty of a fraud in contracting a debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action except for injury to person, character, or property.

Carter Code, sec. 99; Charlton Code, sec. 99.

Alaska Commercial Co. *v.* Raymond (1 Alaska Rep., 154). Valentine *v.* Roberts (1 Alaska Rep., 536).

*Generally:* Norman *v.* Zieber (3 Or. Rep., 203). Barton *v.* Saunders (16 Pac. Rep., 921). Neimeitz *v.* Conrad (29 Pac. Rep., 352). Banning *v.* Roy (82 Pac. Rep., 708).

*Exemptions*: As to ambassador, etc., see sec. 4063, R. S.; 2 F. S. A., 816. As to members of Congress see Constitution U. S., Art. I, sec 6; 2 F. S. A., 215. As to U. S. enlisted men, see R. S., 1237; 7 F. S. A., 1016. As to U. S. marines, see R. S., 1610; 5 F. S. A. 347. As to witnesses, see sec. 1509, chap. 66 of this title.

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Proceeding to obtain an arrest.

SEC. 932. The mode of proceeding to obtain the arrest of the defendant for any of the causes specified in the section last preceding shall be as provided in this section:

First. At any time after the commencement of an action at law, and before judgment, the plaintiff in such action shall, in the discretion of the court, or the judge thereof be entitled to a writ of arrest for such defendant whenever he shall make and file with the clerk of the court in which such action is commenced, or is at the time pending, an affidavit that the plaintiff has a sufficient cause of action therein, and that the case is one of those mentioned in the section last preceding; and shall also make and file with such clerk an undertaking, with sufficient sureties, in a sum not less than three hundred dollars, and equal to the amount for which the plaintiff prays judgment. Such undertaking shall be conditioned that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest if the same be wrongful or without sufficient cause, not exceeding the amount specified in the undertaking.

Second. The affidavit may be either positive or upon information and belief; but if the latter, it shall state the facts upon which the belief is founded. The plaintiff shall also file with his undertaking the affidavits of the sureties therein, from which it must appear that such sureties are residents of the District, and that they are, taken together, worth double the amount of the sum specified in the undertaking over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest is qualified to become surety in an undertaking for an arrest.

Third. The writ of arrest shall be issued by the court, judge, or commissioner in his or its discretion, and shall require the marshal forthwith to arrest the defendant and hold him to bail in the amount specified in the undertaking, and that in default thereof he keep him in custody until discharged by law, and to return the writ to the court from which it issued, with his doings indorsed thereon, when required by the plaintiff at any time before the defendant may be arrested, or afterwards whenever the defendant shall have been discharged from the arrest on bail or otherwise.

Fourth. The plaintiff shall deliver or cause to be delivered to the marshal with the writ a copy of the affidavit upon which the warrant was issued, subscribed by himself or attorney. The marshal, upon the delivery of the writ, shall indorse thereon the date of the receipt, and upon the arrest of the defendant shall deliver to him a copy of the writ and such copy of the affidavit. The marshal shall execute the writ by arresting the defendant and keeping him in custody until discharged by law.

Carter Code, sec. 100; Charlton Code, sec. 100.

Alaska Comm. Co. *v.* Raymond (1 Alaska Rep., 154). Barton *v.* Saunders (16 Pac. Rep., 921).

Defendant may be discharged on bail or deposit.

SEC. 933. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the writ of arrest, as provided in this chapter.

Carter Code, sec. 101; Charlton Code, sec. 101.

Bail, how given.

SEC. 934. The defendant may give bail by causing a written undertaking to be executed in favor of the plaintiff by sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section nine hundred and thirty-one, an under-

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taking to the same effect as that provided by section nine hundred and fifty-nine.

Carter Code, sec. 102; Charlton Code, sec. 102.

U. S. *v.* Griswold (11 Fed. Rep., 810). Paddock *v.* Hume (6 Or. Rep., 83). Taylor *v.* Fleckenstein (30 Fed. Rep., 99). Waldron *v.* Harrison (2 Or. Rep., 87). Whitney *v.* Darrow (5 Or. Rep., 442).

Surrender of defendant.

SEC. 935. At any time before failure to comply with the undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the marshal in the following manner:

First. A certified copy of the undertaking of the bail shall be delivered to the marshal, who shall detain the defendant in his custody thereon as upon a writ of arrest, and shall, by a certificate in writing, acknowledge the surrender.

Second. Upon a production of a copy of the undertaking and marshal's certificate, the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on the application with the clerk of the court where the action is pending they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in the third subdivision of section nine hundred and thirty-one so far as to discharge the bail from an undertaking given to the effect provided by section nine hundred and sixty.

Carter Code, sec. 103; Charlton Code, sec. 103.

Hume *v.* Norris (5 Or. Rep., 478).

Same subject.

SEC. 936. For the purpose of surrendering the defendant, the bail at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower the marshal or any other person of suitable age and discretion to do so.

Carter Code, sec. 104; Charlton Code, sec. 104.

Bail, how proceeded against.

SEC. 937. In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

Carter Code, sec. 105; Charlton Code, sec. 105.

How exonerated.

SEC. 938. The bail may be exonerated, either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the marshal or any deputy in execution thereof, within twenty days after the commencement of the action against the bail or within such further time as may be granted by the court.

Carter Code, sec. 106; Charlton Code, sec. 106.

Delivery of copy of undertaking.

SEC. 939. Within five days after the execution of the undertaking of the bail the marshal or deputy having the defendant in custody shall deliver to the plaintiff or his attorney, or such other person as the plaintiff may direct, a certified copy of the undertaking, with the data of the arrest indorsed thereon. In any other case the marshal may mail such copy within the same time to the plaintiff or his attorney, within the district, or to either of them, as the plaintiff may direct. The plaintiff, within ten days from the delivery of such copy, or fifteen days from the mailing of the same, if sent by mail, may serve upon the marshal or deputy for the defendant in custody a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the marshal shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the court where the action is pending.

Carter Code, sec. 107; Charlton Code, sec. 107.

Taylor *v.* Fleckenstein (30 Fed. Rep., 105).

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Notice of justification of bail.

SEC. 940. On the receipt of such notice the marshal or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the district court or clerk of the court where the action is pending, or a commissioner, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case neither the plaintiff nor his attorney reside within one hundred miles from where the arrest is made, the notice may be served upon the person, and in the manner provided for serving the copy of the undertaking in the section last preceding. In case other bail be given, there shall be a new undertaking, in the form and to the effect prescribed in section nine hundred and thirty-four.

Carter Code, sec. 108; Charlton Code, sec. 108.

Simison *v.* Simison (9 Or. Rep., 335).

Qualifications of bail.

SEC. 941. The qualifications of bail shall be as follows:

First. Each of them shall be a resident within the district; but no counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court shall be permitted to become bail in any action.

Second. Each of them shall be worth the amount specified in the writ of arrest, or the amount to which the same may be reduced as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge, clerk, or commissioner on justification may allow more than two sureties to justify severally in amounts less than that expressed in the writ, if the whole justification shall be equivalent to that of two sufficient bail

Carter Code, sec. 109; Charlton Code, sec. 109.

Paxton *v.* Lively (85 Pac. Rep., 501).

Justification of bail.

SEC. 942. For the purpose of justification each of the bail shall attend before the judge, commissioner, or clerk at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge, commissioner, or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Carter Code, sec. 110; Charlton Code, sec. 110.

Holcomb *v.* Teal (4 Or. Rep., 353).

Allowance of bail.

SEC. 943. If the judge, commissioner, or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is pending; and the marshal shall thereupon be exonerated from liability.

Carter Code, sec. 111; Charlton Code, sec. 111.

Deposit of money in lieu of bail.

SEC. 944. The defendant may, at the time of his arrest, instead of giving bail, deposit with the marshal the amount mentioned in the writ. Thereupon the marshal shall give the defendant a certificate of the deposit made and the defendant shall be discharged out of custody.

Carter Code, sec. 112; Charlton Code, sec. 112.

Payment by marshal of deposit to clerk.

SEC. 945. The marshal shall, within ten days after the deposit, pay the same into the court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the marshal to collect the sum deposited as in other cases of delinquency

Carter Code, sec. 113; Charlton Code, sec. 113.

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Bail may be given and deposit refunded.

SEC. 946. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section nine hundred and thirty-four, at any time before judgment, and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

Carter Code, sec. 114; Charlton Code, sec. 114.

Deposit, how applied or disposed of.

SEC. 947. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Carter Code, sec. 116; Charlton Code, sec. 116.

When marshal liable as bail and how discharged from such liability.

SEC. 948. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the marshal himself shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, as provided in sections nine hundred and forty, nine hundred and forty-one, nine hundred and forty-two, and nine hundred and forty-three, at any time before process against the person of the defendant to enforce an order or judgment in the action.

Carter Code, sec. 116; Charlton Code, sec. 116.

Judgment against marshal as bail.

SEC. 949. If a judgment be recovered against the marshal upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

Carter Code, sec. 117; Charlton Code, sec. 117.

When bail liable to marshal.

SEC. 950. The bail taken upon arrest shall, unless they justify, or other bail be given or justified, be liable to the marshal by action for any damages which he may sustain by reason of such omission.

Carter Code, sec. 118; Charlton Code, sec. 118.

Plaintiff liable in the first instance for the maintenance of defendant.

SEC. 951. The fees which shall be allowed to the marshal for the food and maintenance of any defendant arrested under the provisions of this chapter shall be as provided by law, and the plaintiff shall be liable in the first instance for such fees, and if required by the marshal, shall pay the same weekly in advance; and such fees so paid shall be added to the disbursements taxed or accruing in the case, and be collected as other disbursements.

Carter Code, sec. 119; Charlton Code, sec. 119.

When marshal may discharge defendant for nonpayment of maintenance.

SEC. 952. If the plaintiff shall neglect to pay such fees for three days after a demand of payment, the marshal may discharge the defendant out of custody.

Carter Code, sec. 120; Charlton Code, sec. 120.

Motion to vacate writ of arrest.

SEC. 953. A defendant arrested may, at any time before judgment, apply on motion to the court or judge thereof in which the action is pending, upon notice to the plaintiff, to vacate the writ of arrest.

Carter Code, sec. 121; Charlton Code, sec. 121.

Alaska Comm. Co. *v.* Raymond (1 Alaska Rep., 155). Anvil G. M. Co. *v.* Hoxie (1 Alaska Rep., 605). First Nat. Bank *v.* Fish (2 Alaska Rep., 350). Barton *v.* Saunders (16 Pac. Rep., 921).

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Proceedings thereon.

SEC. 954. If a motion be made upon affidavits or other proofs on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those upon which the writ was issued. If upon the hearing of such motion it shall satisfactorily appear that there was not sufficient cause to allow the writ, or that there is other good cause which would entitle him to be discharged on habeas corpus, the same shall be vacated, or in case he has given bail the court may discharge the same or reduce the amount thereof on good cause shown.

Carter Code, sec. 122; Charlton Code, sec. 122.

Alaska Comm. Co. *v.* Raymond (1 Alaska Rep., 155). Anvil G. M. Co. *v.* Hoxie (1 Alaska Rep., 605). First Nat. Bank *v.* Fish (2 Alaska Rep., 350).

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# CHAPTER THIRTEEN.

## OF THE RECOVERY OF PERSONAL PROPERTY.

Sec.
955. When delivery may be claimed in an action for the possession of personal property.
956. Affidavit therefor, what it must show.
957. Indorsement thereon, requiring the marshal to take property.
958. Undertaking to marshal on the part of plaintiff.
959. Exception to securities by defendant, proceedings thereon.
960. How and when defendant entitled to redelivery.
961. Justification of sureties on defendant's undertaking.
962. Qualification and justification of of sureties.
963. Power of marshal when property concealed in building or inclosure.
964. Property, how kept and when delivered to plaintiff.
965. Proceedings when property claimed by third person.
966. Return of affidavit by marshal.

June 6, 1900.

31 Stat. L., 351–353.
R. S., 2d Supp., pp. 1224–1226.

When delivery may be claimed in an action for the possession of personal property.

SEC. 955. In an action to recover possession of personal property the plaintiff, at any time after the action is commenced, and before judgment, may claim the immediate delivery of such property, as provided in this chapter.

Carter Code, sec. 123; Charlton Code, sec. 123.

C. P. Jorgenson Co. *v.* Rapp (157 Fed. Rep., 732).

*Generally*: Moser *v.* Jenkins (5 Or. Rep., 447). Searles *v.* Sweeney (4 Pac. Rep., 469). Kimball *v.* Radfield (54 Pac. Rep., 216). Guille *v.* Wong Fook (11 Pac. Rep., 277). Morehouse *v.* Donaca (13 Pac. Rep., 112). Marx *v.* Croisan (21 Pac. Rep., 310). Hufman *v.* Knight (60 Pac. Rep., 207). Schwartz *v.* Lee Gon (80 Pac. Rep., 110). Jenkins *v.* City of Ontario (74 Pac. Rep., 466). Byers *v.* Ferguson (68 Pac. Rep,, 5). Culver *v.* Randle (78 Pac. Rep., 394). La Vie *v.* Crosby (74 Pac. Rep., 220). Feller *v.* Feller (66 Pac. Rep., 468). Leve *v.* Frazer (70 Pac. Rep., 376). La Vie *v.* Tooze (74 Pac. Rep., 210). Backhaus *v.* Buells (73 Pac. Rep., 342). Nichols & Shepard Co. *v.* Trower (78 Pac. Rep., 575). Casto *v.* Murray (81 Pac. Rep., 883). Leavitt *v.* Shook (83 Pac. Rep., 391). Taylor *v.* Brown (90 Pac. Rep., 673). Freeman *v.* Trummer (91 Pac. Rep., 1077). Brown *v.* Lewis (92 Pac. Rep., 1058). Krebs Hop Co. *v.* Taylor (98 Pac. Rep., 494).

*For what property it lies*: Phipps *v.* Taylor (16 Pac. Rep., 171). Guille *v.* Wong Fook (11 Pac. Rep., 277). Hufman *v.* Knight (60 Pac. Rep., 207). Sharp *v.* Johnson (63 Pac. Rep., 485). Willis *v.* Marx (45 Pac. Rep., 293). McConnaughey *v.* Wylie (33 Fed. Rep., 453). Wheeler *v.* McFerron (52 Pac. Rep., 993). Berry *v.* Charlton (10 Or. Rep., 363). Hamilton *v.* Gordon (30 Pac. Rep., 495). Coos Bay R. Co. *v.* Wieder (38 Pac. Rep., 338). Feller *v.* Feller (66 Pac. Rep., 468). La Vie *v.* Tooze (74 Pac. Rep., 210). Schwartz *v.* Le Gon (80 Pac. Rep., 110).

*Ownership*: Lewis *v.* Birdsey (26 Pac. Rep., 623). Sharp *v.* Johnson (63 Pac. Rep., 485). Gregory *v.* Nor. Pac. L. Co. (17 Pac. Rep., 143). Case T. M. Co. *v.* Campbell (13 Pac. Rep., 324). Reinstein *v.* Roberts (55 Pac. Rep., 90). Morehouse *v.* Donaca (13 Pac. Rep., 112). Mayes *v.* Stevens (63 Pac. Rep., 760). Kimball *v.* Radfield (54 Pac. Rep., 216).

*Demand*: Morehouse *v.* Donaca (13 Pac. Rep., 112). Velsian *v.* Lewis (16

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Pac. Rep., 631). Moser *v.* Jenkins (5 Or., 449). Searles *v.* Sweeney (4 Pac. Rep., 469). Hexter *v.* Schneider (12 Pac. Rep., 668).

*Pleadings*: Foredice *v.* Rhinehart (8 Pac. Rep., 285). Prescott *v.* Heilner (9 Pac. Rep., 403). Guille *v.* Wong Fook (11 Pac. Rep., 277). Krause *v.* Herbert (18 Pac. Rep., 852). Gardner *v.* Gillihan (27 Pac. Rep., 220). Kimball *v.* Redfield (54 Pac. Rep., 216). Simons *v.* Wrightman (58 Pac. Rep., 1100). Marx *v.* Croisan (21 Pac. Rep., 310). Morehouse *v.* Donaca (13 Pac. Rep., 112). Coos Bay R. Co. *v.* Siglin (38 Pac. Rep., 192). Howard *v.* Conde (30 Pac. Rep., 454). Spores *v.* Boggs (6 Or. Rep., 122). Capital Lbr. Co. *v.* Hall (10 Or. Rep., 202). Kirk *v.* Matlock (7 Pac. Rep., 322). Mayes *v.* Stevens (64 Pac. Rep., 319).

*Return of property*: Capital Lbr. Co. *v.* Learned (59 Pac. Rep., 454).

*Estoppel*: Capital Lbr. Co. *v.* Learned (59 Pac. Rep., 454). Nichols & Shepard & Co. *v.* Trower (78 Pac. Rep., 575).

NOTE.—As to verdict in action to recover personal property see sec. 1036, chap. 18 of this title.

As to judgment in same see sec. 1085, chap. 29 of this title.

Affidavit therefor, what it must show.

SEC. 956. When a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—

First. That the plaintiff is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

Second. That the property is wrongfully detained by the defendant;

Third. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

Fourth. That the same has not been taken for a tax assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

Carter Code, sec. 124; Charlton Code, sec. 124.

Carlton *v.* Dickson (6 Pac. Rep., 500). Moser *v.* Jenkins (5 Or. Rep., 449). O'Sullivan *v.* Blakely (104 Pac. Rep., 297).

Indorsement thereon, requiring the marshal to take property.

SEC. 957. The plaintiff may thereupon, by an indorsement in writing upon the affidavit, require the marshal to take the property from the defendant and deliver it to the plaintiff.

Carter Code, sec. 125; Charlton Code, sec. 125.
Carlton *v.* Dickson (6 Pac. Rep., 500).

Undertaking to marshal on the part of plaintiff.

SEC. 958. Upon the receipt of the affidavit and indorsement thereon, with a written undertaking executed by two or more sufficient sureties approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the marshal shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, indorsement thereon, and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office directed to the defendant at the post office nearest to him.

Carter Code, sec. 126; Charlton Code, sec. 126.

Coos Bay R. Co. *v.* Wieder (38 Pac. Rep., 338). Capital Lbr. Co. *v.* Learned (59 Pac. Rep., 454). Jordan *v.* La Vine (15 Pac. Rep., 281). Carlton *v.* Dickson (6 Pac. Rep., 500).

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Exception to securities by defendant, proceedings thereon.

SEC. 959. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the marshal shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justified. If the defendant except to the sureties, he can not reclaim the property, as provided in the next section.

Carter Code, sec. 127; Charlton Code, sec. 127.

How and when defendant entitled to redelivery.

SEC. 960. At any time before the delivery of the property to the plaintiff the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to be approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of a copy of the affidavit and undertaking of a defendant, it shall be delivered to the plaintiff, except as provided in section nine hundred and sixty-four.

Carter Code, sec. 128; Charlton Code, sec. 128.

Kimball *v.* Bleick (32 Pac. Rep., 766).
Lewis *v.* McNary (62 Pac. Rep., 897). Coos Bay R. Co. *v.* Wieder (38 Pac. Rep., 338).

Justification of sureties on defendant's undertaking.

SEC. 961. The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a judge of the district court or commissioner, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest. Upon such justification the marshal shall deliver the property to the defendant. The marshal shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Carter Code, sec. 129; Charlton Code, sec. 129.

Qualification and justification of sureties.

SEC. 962. Qualifications of sureties and their justification shall be as prescribed by sections nine hundred and forty-one and nine hundred and forty-two in respect to bail upon an order of arrest.

Carter Code, sec. 130; Charlton Code, sec. 130.

Power of marshal when property concealed in building or inclosure.

SEC. 963. If the property or any part thereof be concealed in a building or inclosure the marshal shall publicly demand its delivery. If it be not delivered he shall cause the building or inclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of the district.

Carter Code, sec. 131; Charlton Code, sec. 131.

Property, how kept and when delivered to plaintiff.

SEC. 964. When the marshal shall have taken the property as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Carter Code, sec. 132; Charlton Code, sec. 132.

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Proceedings when property claimed by third person.

SEC. 965. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the marshal before the delivery of the property to the plaintiff, the marshal shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, shall indemnify the marshal against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution. And no claim to such property by any other person than the defendant or his agent shall be valid against the marshal unless made as aforesaid; and notwithstanding such claim when so made he may retain the property a reasonable time to demand such indemnity.

Carter Code, sec. 133; Charlton Code, sec. 133.

Return of affidavit by marshal.

SEC. 966. The marshal shall file the affidavit, with his proceedings thereon, including an inventory of the property taken, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein, or he may mail or forward the same to the clerk within that time.

Carter Code, sec. 134; Charlton Code, sec. 134.

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# CHAPTER FOURTEEN.

## OF ATTACHMENT.


Sec.
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982. Undertaking of the defendant upon such order.
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988. Plaintiff may have judgment for want of answer, or garnishee may be compelled to answer.
989. Exceptions to answer.
990. Reply to answer, and trial of issue thereon.
991. Judgment against the garnishee upon answer or trial.
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June 6, 1900. 31 Stat. L., 353-357. R. S., 2d Supp., pp. 1227-1231.

SEC. 967. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be



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When plaintiff may have property of defendant attached.

recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

First. In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second. In an action upon a contract, express or implied, against a defendant not residing in the District.

Carter Code, sec. 135; Charlton Code, sec. 135.

Moody *v.* First Nat. Bank of Skagway (1 Alaska Rep., 104). Whitehead *v.* N. Y. & Alas. Min. Co. (1 Alaska Rep., 245). First Nat. Bank *v.* Fish (2 Alaska Rep., 350). Anvil G. M. Co. *v.* Hoxsie (125 Fed. Rep., 724; 60 C. C. A., 492; 2 Alaska Rep., 649).

*Generally*: Fisher *v.* Gaither (51 Pac. Rep., 736). Sabin *v.* Anderson (49 Pac. Rep., 870). Matlock *v.* Babb (49 Pac. Rep., 873). Schneider *v.* Sears (8 Pac. Rep., 841). White *v.* Johnson (40 Pac. Rep., 511). Suksdorff *v.* Bigham (12 Pac. Rep., 818). Batchelor *v.* Richardson (21 Pac. Rep., 392). Trabant *v.* Rummell (12 Pac. Rep., 56). Mitchell *v.* Schoonover (17 Pac. Rep., 867). Bunneman *v.* Wagner (18 Pac. Rep., 841). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359). Ehrman *v.* Astoria R. Co. (38 Pac. Rep., 306). Watson *v.* Loewenberg (56 Pac. Rep., 289). Meyer *v.* Brooks (44 Pac. Rep., 281). Brauer *v.* Portland (60 Pac. Rep., 379). Lewis *v.* Birdseye (26 Pac. Rep., 623). Mitchell *v.* Silver Lake Lodge (45 Pac. Rep., 798). Dawson *v.* Coffey (8 Pac. Rep., 838). Goodnough Merch Co. *v.* Galloway (84 Pac. Rep., 1049). Haines *v.* Connell (87 Pac. Rep., 265). Bowman *v.* Wade (103 Pac. Rep., 76).

*Garnishment generally*: Williams *v.* Gallick (3 Pac. Rep., 469). Case *v.* Noyes (19 Pac. Rep., 104). Smith *v.* Conrad (31 Pac. Rep., 398).

Writ of attachment, by whom issued, and for what causes.

SEC. 968. A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing—

First. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract, expressed or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; and

Second. That the sum for which the attachment is asked is an actual, bona fide, existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Carter Code, sec. 136; Charlton Code, sec. 136.

Marx *v.* Shoup (181 U. S. Rep., 562; 1 Alaska Rep., 705). Whitehead *v.* N. Y. & Alaska Min. Co. (1 Alaska Rep., 246). Alaska Commer. Co. *v.* Dabney (2 Alaska Rep., 306). Bank of Winnemucca *v.* Mullaney (45 Pac. Rep., 796). Ehrman *v.* Astoria R. Co. (38 Pac. Rep., 306). White *v.* Thompson (5 Or. Rep., 115). Watson *v.* Loewenberg (56 Pac. Rep., 289). Crawford v. Roberts (8 Or. Rep., 324).

Undertaking of plaintiff to be filed before writ issues.

SEC. 969. Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issued as soon thereafter as he shall file with the clerk his undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages that he may sustain by reason of the attachment if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified, and that, taken together, they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. No per-

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son not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment.

Carter Code, sec. 137; Charlton Code, sec. 137.

Anvil G. M. Co. *v.* Hoxie & Lyng (1 Alaska Rep., 605). First Nat. Bank *v.* Fish (2 Alaska Rep. 350). Ebner *v.* Heid (125 Fed. Rep., 680; 60 C. C. A., 372; 2 Alaska Rep., 648). Elwell *v.* Seattle Scandinavian Fish Co. (2 Alaska Rep., 619). Aldrich *v.* Columbia R. Co. (64 Pac. Rep., 459). Mitchell *v.* Silver Lake Lodge (45 Pac. Rep., 798). Drake *v.* Swarts (33 Pac. Rep., 563). Bing Gee *v.* Ah Jim (7 Fed. Rep., 811).

Writ, to whom directed, and what it shall require.

SEC. 970. The writ shall be directed to the marshal, and shall require him to attach and safely keep all the property of such defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time for delivery to different deputy marshals.

Carter Code, sec. 138; Charlton Code, sec. 138.

Fishburn *v.* Londerhausen (92 Pac. Rep., 1060).

What property may be attached.

SEC. 971. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in the District of such defendant not exempt from execution, shall be liable to be attached. The marshal shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Carter Code, sec. 139; Charlton Code, sec. 139.

Security Trust Co. *v.* Loewenberg (62 Pac. Rep., 647). Dahms *v.* Sears (11 Pac. Rep., 891). Harrington *v.* La Rocque (10 Pac. Rep., 498). Cogswell *v.* Wilson (21 Pac. Rep., 388). Hughs *v.* Oregonian R. Co. (2 Pac. Rep., 94). Faull *v.* Alaska G. & S. Min. Co. (14 Fed. Rep., 657). O. R. & N. Co. *v.* Gates (10 Or. Rep., 514). Fishburn *v.* Londerhausen (92 Pac. Rep., 1060). Jennings *v.* Lentz (93 Pac. Rep., 327). Thorsen *v.* Hooper (93 Pac. Rep., 361). Caldwell B. & T. Co. *v.* Porter (95 Pac. Rep., 1.

NOTE.—See sec. 1107, chap 31, of this title, as to property in possession of garnishee.

As to when building material, etc., not subject to attachment see sec. 702, chap. 28, Civil Code.

Writ, how executed.

SEC. 972. The marshal or deputy marshal to whom the writ is delivered shall execute the same without delay, as follows:

First. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ certified by the marshal.

Second. Personal property capable of manual delivery to the marshal, and not in the possession of a third person, shall be attached by taking it into his custody.

Third. Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or shares in the stock of an association or corporation, or interest or profits thereof, then with such person or officer of such association or corporation as this code authorizes a summons to be served upon.

Carter Code, sec. 140; Charlton Code, sec. 140.

Shoup *v.* Marx (128 Fed. Rep., 32; 62 C. C. A., 540; 2 Alaska Rep., 753).

*Generally*: Gerdes *v.* Sears (10 Pac. Rep., 631). Schneider *v.* Sears (8 Pac. Rep., 841). La Follette *v.* Mitchell (69 Pac. Rep., 912). White *v.* Ladd (68 Pac. Rep., 739). Boehringer *v.* Craten (10 Or. Rep., 42). Fishburn *v.* Londerhausen (92 Pac. Rep., 1060). Jennings *v.* Lentz (93 Pac. Rep., 327).

*Real property*: Hall *v.* Stevenson (23 Pac. Rep., 887). State *v.* Corne-

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lius (5 Or. Rep., 46). Dickson *v.* Back (51 Pac. Rep., 727). Mickey *v.* Stratton (5 Saw. Rep., 475). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359). Sabin *v.* Mitchell (39 Pac. Rep., 635). McDowell *v.* Perry (76 Pac. Rep., 1081). Katz *v.* Obenchain (85 Pac. Rep., 617). Haines *v.* Connell (87 Pac. Rep., 265).

*Personal property*: State *v.* Cornelius (5 Or. Rep., 46). Cogswell *v.* Wilson (21 Pac. Rep., 388). Maxwell *v.* Bolles (41 Pac. Rep., 661). Sharp *v.* Johnson (63 Pac. Rep., 485). Marx *v.* Shoup (181 U. S. Rep., 562). Spaulding *v.* Kennedy (6 Or. Rep., 209). Lewis *v.* Birdseye (26 Pac. Rep., 623). Carter *v.* Koshland (8 Pac. Rep., 556; 12 Pac. Rep., 58). Barr *v.* Warner (62 Pac. Rep., 899). Batcheler *v.* Richardson (21 Pac. Rep., 392). Coos Bay R. Co. *v.* Wieder (38 Pac. Rep., 338). Hughs *v.* Oregonian R. Co. (2 Pac. Rep., 94). Faull *v.* Alaska G. & S. Min. Co. (14 Fed. Rep., 657). Sespain *v.* Crow (12 Pac. Rep., 806). Norton *v.* Winter (1 Or. Rep., 47). Baker *v.* Eglin (8 Pac. Rep., 280). Adamson *v.* Fraser (66 Pac. Rep., 810). Sabin *v.* Mitchell (39 Pac. Rep., 635).

*Officers' return*: Batchelor *v.* Richardson (21 Pac. Rep., 392). Griffen *v.* Amer. G. M. Co. (136 Fed. Rep., 69; 68 C. C. A., 637; 2 Alaska Rep., 647). Sabin *v.* Mitchell (39 Pac. Rep., 635). Schlosser *v.* Beemer (67 Pac. Rep., 299). White *v.* Ladd (68 Pac. Rep., 739). La Follette *v.* Mitchell (69 Pac. Rep., 912).

*Expenses in keeping*: Schneider *v.* Sears (8 Pac. Rep., 841). Mitchell *v.* Downing (32 Pac. Rep., 394). Hawley *v.* Dawson (18 Pac. Rep., 592).

Effect of attachment as to third persons.

SEC. 973. From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock, or debts be delivered, transferred, or paid to the marshal, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

Carter Code, sec. 141; Charlton Code, sec. 141.

Boehringer *v.* Creighton (10 Or. Rep., 42). Gill *v.* Frank (8 Pac. Rep., 764). Dickey *v.* Hennarie (15 Pac. Rep., 464). Riddle *v.* Miller (23 Pac. Rep., 807). Dimick *v.* Rosenfeldt (55 Pac. Rep., 100). Osgood *v.* Osgood (56 Pac. Rep., 1017). Rhodes *v.* McGarry (23 Pac. Rep., 971). Meier *v.* Hess (32 Pac. Rep., 755). Security Trust Co. *v.* Loewenberg (62 Pac. Rep., 647). O. R. & N. Co. *v.* Gates (10 Or. Rep., 514). Baker *v.* Eglin (8 Pac. Rep., 280). Phipps *v.* Riley (16 Pac. Rep., 185). Case *v.* Noyes (19 Pac. Rep., 104). Flegel *v.* Chas. Koss & Bros. Co. (83 Pac. Rep., 847). Haines *v.* Connell (87 Pac. Rep., 265). William Hanley Co. *v.* Combs (87 Pac. Rep., 143). Fishburn *v.* Londerhausen (92 Pac. Rep., 1060). Jennings *v.* Lentz (93 Pac. Rep., 327). Griffin *v.* Internat. Trust Co. (161 Fed. Rep., 48). Cowden *v.* Wild Goose Trading Co. (199 Fed. Rep., 561).

When real property attached, certificate of marshal.

SEC. 974. If real property be attached, the marshal shall make a certificate containing the title of the cause, the names of the parties, a description of such real property, and a statement that the same has been attached at the action of the plaintiff, and the date thereof. Within ten days from the date of the attachment, the marshal shall deliver such certificate to the commissioner as ex officio recorder of the recording district in which such real property is situated, who shall file the same in his office and record it in a book to be kept for that purpose. When such certificate is so filed for record the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against third persons, from the date of such subsequent filing. Whenever such lien shall be discharged it shall be the duty of the commissioner as ex officio recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that such lien has been discharged in the book mentioned in this section. The commissioner shall also enter on the margin of the page on which the certifi-

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cate is recorded a minute of the discharge, and the page and book where recorded.

Carter Code, sec. 142; Charlton Code, sec. 142.

Dickson *v.* Beck (51 Pac. Rep., 727). Schlosser *v.* Beemer (67 Pac. Rep., 299). McDowell *v.* Parry (76 Pac. Rep., 1081). Katz *v.* Obenchain (85 Pac. Rep., 617). Haines *v.* Connell (88 Pac. Rep., 872). Jennings *v.* Lentz (93 Pac. Rep., 327).

NOTE.—As to unrecorded conveyance see sec. 524, chap. 11, Civil Code.

When third persons must furnish certificate to marshal.

SEC. 975. Whenever the marshal, with a writ of attachment against the defendant, shall apply to any person or officer mentioned in subdivision three of section nine hundred and seventy-two for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and description of any property in his possession belonging to the defendant, or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court, or judge thereof, where the action is pending, to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

Carter Code, sec. 143; Charlton Code, sec. 143.

Carter *v.* Koshland (8 Pac. Rep., 556). Altona *v.* Dabney (62 Pac. Rep., 521). Batchelor *v.* Richardson (21 Pac. Rep., 392). Burns *v.* Payne (49 Pac. Rep., 884). Barr *v.* Warner (62 Pac. Rep., 899). Adamson *v.* Fraser (66 Pac. Rep., 810; 67 Pac. Rep., 300). Case *v.* Noyes (19 Pac. Rep., 104). Colbath *v.* Hoefer (73 Pac. Rep., 10).

NOTE.—See sec. 985 of this chapter for contents of order.

Perishable property may be sold.

SEC. 976. If any of the property attached be perishable, the marshal shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Personal property mentioned in subdivision three of section nine hundred and seventy-two may be delivered, transferred, or paid to the marshal without an action, and his receipt therefor shall be a sufficient discharge accordingly.

Carter Code, sec. 144; Charlton Code, sec. 144.

When marshal may deliver property to defendant.

SEC. 977. The marshal may deliver any of the property attached to the defendant, or to any other person claiming it, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to redeliver it or pay the value thereof to the marshal, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Carter Code, sec. 145; Charlton Code, sec. 145.

Anvil G. M. Co. *v.* Hoxie & Lyng (1 Alaska Rep., 604). Ebner *v.* Heid (125 Fed. Rep., 680; 60 C. C. A., 370; 2 Alaska Rep., 648). Kohn *v.* Hinshaw (20 Pac. Rep., 629). Dickson *v.* Beck (51 Pac. Rep., 727). Drake *v.* Swarts (33 Pac. Rep., 563). Coos Bay R. Co. *v.* Weider (38 Pac. Rep. 338). Duncan *v.* Thomas (1 Or. Rep., 314). Winter *v.* Union Pack. Co. (93 Pac. Rep., 931). Johnson et al. *v.* Show et al. (190 Fed. Rep., 538).

Defense to action upon such undertaking.

SEC. 978. If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

Carter Code, sec. 146; Charlton Code, sec. 146.

Dickson *v.* Beck (51 Pac. Rep., 727).

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If judgment recovered by plaintiff, marshal to apply property upon execution, remainder to be delivered to defendant.

SEC. 979. If judgment be recovered by the plaintiff, and it shall appear that the property has been attached in the action and has not been sold as perishable property or discharged from the attachment as provided by law, the court shall order and adjudge the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the marshal shall apply the property attached by him, or the proceeds thereof, upon the execution, and if there be any such property or proceeds remaining after satisfying such execution, he shall, upon demand, deliver the same to the defendant.

Carter Code, sec. 147; Charlton Code, sec. 147.

Bremer *v.* Fleckenstein (9 Or. Rep., 271). Carter *v.* Koshland (8 Pac. Rep., 556; 12 Pac. Rep., 58). De Witt *v.* Kelly (23 Pac. Rep., 666). Berry *v.* Charlton (10 Or. Rep., 362). Moore & Shafer Shoe Mfg. Co. *v.* Billings (80 Pac. Rep., 422). White *v.* Ladd (68 Pac. Rep., 739). Oliver *v.* Wright (83 Pac. Rep., 870). Katz *v.* Obenchain (85 Pac. Rep., 617). Miller *v.* Shute (107 Pac. Rep., 467).

NOTE.—As to entry of judgment see sec. 1083, chap. 29, of this title.

If judgment not recovered by plaintiff, property to be returned to defendant.

SEC. 980. If judgment be not recovered by the plaintiff, all the property attached, or the proceeds thereof, or the undertaking therefor, shall be returned to the defendant upon his serving upon the marshal a certified copy of the order discharging the attachment.

Carter Code, sec. 148; Charlton Code, sec. 148.

How defendant may have an order for the return of the property.

SEC. 981. Whenever the defendant shall have appeared in the action he may apply upon notice to the plaintiff to the court or judge where the action is pending, or to the clerk of such court, for an order to discharge the attachment upon the execution of the undertaking mentioned in the next section; and if the application be allowed, all the proceeds of sales of property remaining in his hands shall be released from the attachment and delivered to the defendant upon his serving a certified copy of the order on the marshal.

Carter Code, sec. 149; Charlton Code, sec. 149.

Anvil G. M. Co. *v.* Hoxey & Lyng (1 Alaska Rep., 604, 606). Duncan *v.* Thomas (1 Or. Rep., 314). Drake *v.* Swarts (33 Pac. Rep., 563). Bunneman *v.* Wagner (18 Pac. Rep., 841). Kohn *v.* Hinshaw (20 Pac. Rep., 629).

Undertaking of the defendant upon such order.

SEC. 982. Upon such application the defendant shall deliver to the court or judge to whom the application is made an undertaking executed by one or more sureties, to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. If the plaintiff demand it, the sureties shall be required to justify in the same manner as bail upon an arrest.

Carter Code, sec. 150; Charlton Code, sec. 150.

Anvil G. M. Co. *v.* Hoxie & Lyng (1 Alaska Rep., 604, 606). Anvil G. M. Co. *v.* Hoxsie (125 Fed. Rep., 724; 60 C. C. A., 492; 2 Alaska Rep., 649). Winter *v.* Union Pack Co. (93 Pac. Rep., 931).

When the defendant may move to discharge the attachment.

SEC. 983. The defendant may, at any time before judgment, except where the cause of attachment and the cause of action are the same, apply to the court or judge thereof where the action is pending, to discharge the attachment, in the manner and with the effect as provided in sections nine hundred and fifty-three and nine hundred and fifty-four for the discharge of a defendant from arrest.

Carter Code, sec. 151; Charlton Code, sec. 151.

Anvil G. M. Co. *v.* Hoxie & Lyng (1 Alaska Rep., 605). First Nat. Bank *v.* Fish (2 Alaska Rep., 345, 350). Watson *v.* Loewenberg (56 Pac. Rep., 289). Bank of Winnemucca *v.* Mullaney (45 Pac. Rep., 796). Farmers Bank *v.* Key (54 Pac. Rep., 206). Van Vorhees *v.* Taylor (33 Pac. Rep., 380). Crawford *v.* Roberts (8 Or. Rep., 324). Shepard *v.* Yocum (3 Pac. Rep., 824). Tichnor *v.* Coggins (8 Or. Rep., 270). White *v.* Ladd (68 Pac. Rep., 739).

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When writ to be returned.

SEC. 984. When the writ of attachment shall be fully executed or discharged, the marshal shall return the same, with his proceedings indorsed thereon, to the clerk of the court where the action was commenced.

Carter Code, sec. 152; Charlton Code, sec. 152.

What order upon garnishee shall require.

SEC. 985. The order provided for in section nine hundred and seventy-four shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter upon such order such person or association or corporation shall be known as the garnishee.

Carter Code, sec. 153; Charlton Code, sec. 153.

Dewitt *v.* Kelly (23 Pac. Rep., 666). Adamson *v.* Fraser (66 Pac. Rep., 811). Adamson *v.* Mariner (67 Pac. Rep., 300).

NOTE.—Reference above to sec. 974 is obviously erroneous; the reference intended is to sec. 975.

When plaintiff may serve interrogatories on garnishee.

SEC. 986. After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision three of section nine hundred and seventy-two, and to which such garnishee or officer thereof is required to give a certificate as provided in section nine hundred and seventy-five.

Carter Code, sec. 154; Charlton Code, sec. 154.

Case *v.* Noyes (19 Pac. Rep., 104; 21 Pac. Rep., 46). Smith *v.* Conrad (31 Pac. Rep., 398). Adamson *v.* Mariner (67 Pac. Rep., 300).

Answer of the garnishee.

SEC. 987. On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge, with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

Carter Code, sec. 155; Charlton Code, sec. 155.

Faull *v.* Alaska G. & S. Min. Co. (14 Fed. Rep., 657). Phipps *v.* Riely (16 Pac. Rep., 185). Mullaney *v.* Evans (54 Pac. Rep., 886). Dawson *v.* Maria (16 Pac. Rep., 413). Case *v.* Noyes (19 Pac. Rep., 104).

Plaintiff may have judgment for want of answer, or garnishee may be compelled to answer.

SEC. 988. If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action, have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

Carter Code, sec. 156; Charlton Code, sec. 156.

Exceptions to answer.

SEC. 989. The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same be adjudged insufficient, such garnishee or officer may be allowed to amend his answer on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

Carter Code, sec. 157; Charlton Code, sec. 157.

Reply to answer, and trial of issue thereon.

SEC. 990. The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of fact between

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plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

Carter Code, sec. 158; Charlton Code, sec. 158.

Judgment against the garnishee upon answer or trial.

SEC. 991. If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, had any property of the defendant's liable to attachment as provided in subdivision three of section nine hundred and seventy-two and as to which such garnishee or officer thereof is required to give a certificate as provided in section nine hundred and seventy-five beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying, or transferring the property to the marshal.

Carter Code, sec. 159; Charlton Code, sec. 159.
Caldwell B. & T. Co. *v.* Porter (95 Pac. Rep., 1).

Execution against garnishee; witnesses on trial.

SEC. 992. Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. Witnesses, including the defendant and garnishee or officer thereof, may be required to appear and testify upon such proceeding against a garnishee, as upon the trial of an issue of fact.

Carter Code, sec. 160; Charlton Code, sec. 160.
Case *v* Noyes (19 Pac. Rep., 104).

When restraining order may be allowed against garnishee.

SEC. 993. The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section nine hundred and seventy-five and at any time thereafter before judgment against the garnishee, by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as a contempt.

Carter Code, sec. 161; Charlton Code, sec. 161.

What proceedings known as provisional remedies.

SEC. 994. The proceedings provided for in chapters twelve, thirteen, and fourteen of this title shall be known as provisional remedies.

Carter Code, sec. 162; Charlton Code, sec. 162.

## CHAPTER FIFTEEN.

### OF ISSUES AND THE MODE OF TRIAL.


Sec.
995. The different kinds of issues.
996. Issue of law.
997. Issue of fact.
998. When both issue of law and fact arise, issue of law to be first tried.
999. Trial defined.
1000. Issues, how tried.
1001. Motion to postpone trial on account of absent evidence.


June 6, 1900.
31 Stat. L., 357-358.
R. S., 2d Supp., 1231-1232.
The different kinds of issues.

SEC. 995. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds—

First. Of Law; and,

Second. Of fact.

Carter Code, sec. 163; Charlton Code, sec. 163.

Overgaard *v.* Westerberg (3 Alaska Rep., 178).

Vuilleumier *v.* Or., W. P. & R. Co. (105 Pac. Rep., 706).

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Issue of law.

SEC. 996. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Carter Code, sec. 164; Charlton Code, sec. 164.

Issue of fact.

SEC. 997. An issue of fact arises—

First. Upon a material allegation in the complaint controverted by the answer; or,

Second. Upon new matter in the answer controverted by the reply; or,

Third. Upon new matter in the reply, except an issue of law is joined thereon.

Carter Code, sec. 165; Charlton Code, sec. 165.
Vuilleumier *v.* Or., W. P. & R. Co. (105 Pac. Rep., 786).

When both issue of law and fact arise, issue of law to be first tried.

SEC. 998. Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

Carter Code, sec. 166; Charlton Code, sec. 166.

Trial defined.

SEC. 999. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Carter Code, sec. 167; Charlton Code, sec. 167.

State *v.* Spores (4 Or. Rep., 199). | Hume *v.* Woodward (38 Pac. Rep., 191).

Issues, how tried.

SEC. 1000. An issue of law shall be tried by the court, unless referred as provided in chapter twenty. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in chapters nineteen and twenty.

Carter Code, sec. 168; Charlton Code, sec. 168.
Overgaard *v.* Westerberg (3 Alaska Rep., 178).

Motion to postpone trial on account of absent evidence.

SEC. 1001. A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and a statement of facts showing that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

Carter Code, sec. 169; Charlton Code, sec. 169.

U. S. *v.* Homer Bird (1 Alaska Rep., 379). Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 724). Hackleman *v.* Geise (1 Alaska Rep., 568). Pratt *v.* Untd. Alaska M. Co. (1 Alaska Rep., 95). Englestadt *v.* Dufresne (116 Fed. Rep., 582; 54 C. C. A., 38; 1 Alaska Rep., 831). Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 2 Alaska Rep., 660). Pacey *v.* McKinney (125 Fed. Rep., 675; 60 C. C. A., 365; 2 Alaska Rep., 660). Linn County *v.* Morris (67 Pac. Rep., 297). McCowan *v.* Hannah (3 Or. Rep., 306). Young *v.* Patten (9 Or. Rep., 197). Lew *v.* Lucas (61 Pac. Rep., 344).

NOTE.—See sec. 2221, chap. 13, Code Criminal Procedure for postponement in criminal action.
As to postponement for deposition see sec. 1481, chap. 62 of this title.

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# CHAPTER SIXTEEN.

## OF THE FORMATION OF THE JURY.


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1002. Trial jurors, how selected.
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June 6, 1900.
31 Stat. L., 358–360.
R. S., 2d Supp., pp. 1232–1234.
Trial jurors, how selected.

SEC. 1002. Jurors for the trial of issues of fact in the district of Alaska shall be selected and summoned in the manner prescribed by the laws of the United States with respect to jurors of the United States district and circuit courts, and shall have the same qualifications and be entitled to the same exemptions as are provided by law in the case of grand juries to serve in the district, it being the true intent and meaning of this section that but one jury shall be summoned for the trial of all actions, civil and criminal, triable by the district court of the district.

Carter Code, sec. 170; Charlton Code, sec. 170.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 769). Richards *v.* U. S. (126 Fed. Rep., 105; 61 C. C. A., 161; 2 Alaska Rep., 660). U. S. *v.* Antz (16 Fed. Rep., 119). McDowell *v.* U. S. (159 U. S. Rep., 596).

Formation of jury.

SEC. 1003. Trial juries in civil actions shall be formed as follows: When the action is called for trial, the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders, or the body of the district, as the court may direct, so many qualified persons as may be necessary to complete the jury. Whenever, as in this section provided, the marshal shall summon more than one person at a time from the bystanders or the body of the district, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term. The jury shall consist of twelve persons, unless the parties consent to a less number. Such consent shall be entered in the journal: *Provided*, That hereafter in trials for misdemeanors six persons shall constitute a legal jury.

Carter Code, sec. 171; Charlton Code, sec. 171.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 769). Richards *v.* U. S. (126 Fed. Rep., 105; 61 C. C. A., 161; 2 Alaska Rep., 660). Rasmussen *v.* U. S. (197 U. S., 576; 2 Alaska Rep., 694). Gurvich *v.* U. S. (198 U. S. Rep., 581; 2 Alaska Rep., 695). Glus *v.* U. S. (141 Fed. Rep., 956; 73 C. C. A., 272; 2 Alaska Rep., 695). Mosseou *v.* Veeder (2 Or. Rep., 114). Bloch *v.* Multnomah County (35 Pac. Rep., 30). State *v.* Savage (60 Pac. Rep., 610).

No challenge to panel.

SEC. 1004. No challenge shall be made or allowed to the panel. A challenge is an objection to a particular juror, and may be either—

First. Peremptory; or,

Second. For cause.

Carter Code, sec. 172; Charlton Code, sec. 172.

Fitzhugh *v.* State (2 Or. Rep., 227). State *v.* Dale (8 Or. Rep., 229). State *v.* Savage (60 Pac. Rep., 610). State *v.* Gu Nun (97 Pac. Rep., 96).

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Peremptory challenge defined.

SEC. 1005. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Carter Code, sec. 173; Charlton Code, sec. 173.

State *v.* Steeves (43 Pac. Rep., 947). | State *v.* Gu Nun (97 Pac. Rep., 96).

Challenge for cause defined.

SEC. 1006. A challenge for cause is an objection to a juror, and may be either—

First. General—that the juror is disqualified from serving in any action; or,

Second. Particular—that he is disqualified from serving in the action on trial.

Carter Code, sec. 174; Charlton Code, sec. 174.

State *v.* Ching Ling (18 Pac. Rep., 844). State *v.* Harding (19 Pac. Rep., | 449). State *v.* Gu Nun (97 Pac. Rep., 96).

General causes of challenge.

SEC. 1007. General causes of challenge are—

First. A conviction for felony;

Second. A want of any of the qualifications prescribed by law for a juror;

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Carter Code, sec. 175; Charlton Code, sec. 175.

State *v.* McDonald (8 Or. Rep., 113). State *v.* Powers (10 Or. Rep., 145). | State *v.* Gu Nun (97 Pac. Rep., 96).

NOTE.—As to qualifications see sec. 2120, chap 4, Code Criminal Procedure. As to exemptions see sec. 2121, chap. 4, Code Criminal Procedure.

Particular causes of challenge.

SEC. 1008. Particular causes of challenge are of two kinds:

First. For such bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias;

Second. For the existence of a state of mind on the part of a juror in reference to the action, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

Carter Code, sec. 176; Charlton Code, sec. 176.

State *v.* Miller (81 Pac. Rep., 363). State *v.* Gu Nun (97 Pac. Rep., 96). | Griggs *v.* U. S. (158 Fed. Rep., 572; 85 C. C. A., 596).

Challenge for implied bias.

SEC. 1009. A challenge for implied bias may be taken for any or all of the following causes, and no other:

First. Consanguinity or affinity within the fourth degree to either party;

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of the adverse party; or being surety or bail in the action called for trial, or otherwise, for the adverse party;

Third. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action against either party upon substantially the same facts or transaction;

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Fourth. Interest on the part of the juror in the event of the action on the principal question involved therein.

Carter Code, sec. 177; Charlton Code, sec. 177.

*Affinity and consanguinity*: Paddock *v.* Welts (2 Barb. Ch., 333).
*Interest in result*: Gerrison *v.* Portland (2 Or. Rep., 124). Portland *v.* Kamm (5 Or. Rep., 362). Ford *v.* Umatilla County (16 Pac. Rep., 33). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 1190).
*Generally*: Ford *v.* Umatilla County (16 Pac. Rep., 33). State *v.* Gu Nun (97 Pac. Rep., 96).

Challenge for actual bias.

SEC. 1010. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section one thousand and eight. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied from all the circumstances that the juror can not disregard such opinion and try the issue impartially.

Carter Code, sec. 178; Charlton Code, sec. 178.

Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 63; 1 Alaska Rep., 769). Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 770). Dolan *v.* U. S. (116 Fed. Rep., 578; 54 C. C. A., 34; 1 Alaska Rep., 771). Dolan *v.* U. S. (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 695). Rosencranz *v.* U. S. (155 Fed. Rep., 38; 83 C. C. A., 634). State *v.* Saunders (12 Pac. Rep., 441). Kumli *v.* S. P. Co. (28 Pac. Rep., 637). State *v.* Ingram (31 Pac. Rep., 1049). State *v.* Brown (41 Pac. Rep., 1042). State *v.* Kelly (42 Pac. Rep., 217). State *v.* Olberman (55 Pac. Rep., 886). State *v.* Savage (60 Pac. Rep., 610). State *v.* McDaniel (65 Pac. Rep., 520). State *v.* Tom (8 Or. Rep., 177). S. P. Co. *v.* Rauh (49 Fed. Rep., 699). Williams *v.* Poppleton (3 Or. Rep., 140). State *v.* Armstrong (73 Pac. Rep., 1022). State *v.* Lauth (80 Pac. Rep., 660). State *v.* Miller (81 Pac. Rep., 363). State *v.* Megurden (88 Pac. Rep., 306). State *v.* Gu Nun (97 Pac. Rep., 96).

Exemption from service of jury.

SEC. 1011. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Carter Code, sec. 179; Charlton Code, sec. 179.

Number of challenges.

SEC. 1012. A peremptory challenge or a challenge for cause may be taken by either party. When there are two or more parties, plaintiffs or defendants, they must join in the challenge or it can not be taken. Either party shall be entitled to three peremptory challenges and no more.

Carter Code, sec. 180; Charlton Code, sec. 180.

First challenge taken by defendant; when taken.

SEC. 1013. The defendant first and afterwards the plaintiff shall challenge for cause, and when a challenge has been sustained the vacancy shall be filled before further challenge is made, and any new juror may at any time be challenged for cause by either party to the action. When the panel is full, the defendant shall have one peremptory challenge, followed by one by the plaintiff, and so on alternately until each side has exhausted its right to such challenge.

Carter Code, sec. 181; Charlton Code, sec. 181.

Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 663; 1 Alaska Rep., 769). Dolan *v.* U. S. (116 Fed. Rep., 578; 54 C. C. A., 34; 1 Alaska Rep., 771). State *v.* McDonald (8 Or. Rep., 113). Gerrison *v.* Portland (2 Or. Rep., 123). State *v.* White (87 Pac. Rep., 137).

Order of taking challenges.

SEC. 1014. The challenges of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. For general disqualification.

Second. For implied bias.

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Third. For actual bias.

Fourth. Peremptory; but either party may take peremptory challenge at any time before his right of challenge ceases.

Carter Code, sec. 182; Charlton Code, sec. 182.

Trial of challenge.

SEC. 1015. The challenge may be excepted to by the adverse party for insufficiency; and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party; and if so, the court shall try the issue and determine the law and the fact.

Carter Code, sec. 183; Charlton Code, sec. 183.

State *v.* Tom (8 Or. Rep., 177). | S. P. Co. *v* Rauh (49 Fed. Rep., 699).
Hayden *v.* Long (8 Or. Rep., 244). |

Proceedings in evidence on trial of challenge.

SEC. 1016. Upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise it shall be disallowed.

Carter Code, sec. 184; Charlton Code, sec. 184.

Challenge may be oral.

SEC. 1017. The challenge, the exception, and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

Carter Code, sec. 185; Charlton Code, sec. 185.

Oath of jury.

SEC. 1018. As soon as the number of the jury has been completed an oath or affirmation shall be administered to the jurors in substance that they and each of them will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the law and evidence as given them on the trial.

Carter Code, sec. 186; Charlton Code, sec. 186.

## CHAPTER SEVENTEEN.

### CONDUCT OF THE TRIAL BY JURY.


Sec.
1019. Order of proceedings on the trial.
1020. When a view may be ordered.
1021. Manner of keeping jury.
1022. When juror taken sick, how to proceed.
1023. The charge to the jury.
1024. How jury kept while deliberating; officer to be sworn.
1025. Food and lodging of jurors.
1026. What papers jury may take.
1027. When jury may return for information.
1028. When jury may be discharged without giving verdict.
1029. When new trial may be had if jury discharged.
1030. Court deemed open until jury gives verdict or is discharged.
1031. If juror absent when jury return, jury to be discharged.
1032. Manner of giving verdict.
1033. Jury may be polled, or insufficient verdict corrected.
1034. When verdict complete and jury discharged, verdict to be in writing and entered on the journal.


June 6, 1900.
31 Stat. L., 360–363.
R. S., 2d Supp., pp. 1234–1236.
Order of proceedings on the trial.

SEC. 1019. When the jury has been completed and sworn, the trial shall proceed in the order prescribed in this section, unless the court for special reasons otherwise direct.

First. The plaintiff shall state briefly his cause of action, and the issue to be tried; the defendant shall then in like manner state his defense or counterclaim.

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Second. The plaintiff shall then introduce the evidence on his part, and when he has concluded the defendant shall do the same.

Third. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason and in furtherance of justice, permit them to introduce evidence upon the original cause of action, defense, or counterclaim.

Fourth. Not more than two counsel shall be allowed to address the jury on behalf of the plaintiff or defendant, unless otherwise allowed by the court; and the court may limit the time to be consumed by counsel in arguing the cause to the jury.

Fifth. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the plaintiff shall commence and conclude the argument to the jury. If the plaintiff waive the opening argument, and the defendant then argue the case to the jury, the plaintiff shall not be permitted to reply to the argument of the defendant.

Sixth. The court shall then charge the jury, and if either party require it, and shall at the commencement of the trial give notice of his intention so to do, the charge of the court, so far as it relates to the law and the facts of the case, shall be reduced to writing and given to the jury by the court as written, without any oral explanation. The charge, when reduced to writing, must be filed with the clerk.

Carter Code, sec. 187; Charlton Code, sec. 187.

Alaska Treadwell G. M. Co. *v.* Whelan (64 Fed. Rep., 462; 12 C. C. A., 225; 1 Alaska Rep., 832). Alaska United G. M. Co. *v.* Keating (116 Fed. Rep., 561; 53 C. C. A., 655; 1 Alaska, 832). Allen *v.* U. S. (115 Fed Rep., 3; 52 C. C. A., 597; 1 Alaska Rep., 725). Endleman *v.* U. S. (86 Fed. Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 725). Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 663; 1 Alaska Rep., 725). Alaska United G. M. Co. *v.* Muset (114 Fed. Rep., 66; 52 C. C. A., 14; 1 Alaska Rep., 794). Gibson *v.* Can. Pac. Nev. Co. (1 Alaska Rep., 407). Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 751). Fulkerson *v.* Chisna Min. Co (122 Fed. Rep., 782; 58 C. C. A., 582; 2 Alaska Rep., 751). Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43). Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A. 459; 2 Alaska Rep., 752). Begenish *v.* Gates (2 Alaska Rep., 511). Shoup *v.* Marks (128 Fed. Rep., 32; 62 C. C. A., 540; 2 Alaska Rep., 752). Seittn *v.* Alaska Treadwell G. M. Co. (2 Alaska Rep., 8). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). Northern Com. Co. *v.* Nestor (138 Fed. Rep., 383; 70 C. C. A., 523; 2 Alaska Rep., 668). Johnston *v.* U. S. (154 Fed. Rep., 445). Alaska Treadwell G. M. Co. *v.* Cheney (162 Fed Rep., 593; 89 C. C. A., 351).

*Opening statement*: Long *v.* Lauder (10 Or. Rep., 175). State *v.* Moore (48 Pac. Rep., 468).

*Order of proof*: Dolph *v.* Barney (5 Or. Rep., 209). State *v.* Hunsaker (19 Pac. Rep., 605). Davis *v.* Emmons (51 Pac. Rep., 652). Stinson *v.* Estees (3 Or. Rep., 522). State *v.* Dilley (13 Pac. Rep., 648). Jones *v.* Peterson (74 Pac. Rep., 661). Sloan *v.* Sloan (78 Pac. Rep., 893). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 389).

*Argument to jury*: Hurst *v.* Burnside (8 Pac. Rep., 888). State *v.* Birchard (59 Pac. Rep., 468). State *v.* Morse (57 Pac. Rep., 631). Kelly *v.* Highfield (14 Pac. Rep., 744). State *v.* Hetcher (44 Pac. Rep., 584). Tenny *v.* Mulvaney (8 Or. Rep., 522). State *v.* Mims. (61 Pac. Rep., 888). State *v.* Hawkins (23 Pac. Rep., 475). State *v.* Lee Ping Bo. (10 Or. Rep., 31). State *v.* Anderson (10 Or. Rep., 456). State *v.* Drake (4 Pac. Rep., 1204). State *v.* Abrams (8 Pac. Rep., 327). Boyd *v.* Portland El. Co. (62 Pac. Rep., 378). Watson *v.* Southern Oregon Co. (65 Pac. Rep., 986). State *v.* Brown (41 Pac. Rep., 1042). Huber *v.* Miller (68 Pac. Rep., 400). Thompson *v.* Purdy (77 Pac. Rep., 113).

*Charge to jury*: Smith *v.* Lownsdale (6 Or. Rep., 79). State *v.* Armstrong (73 Pac. Rep., 1023). Casto *v.* Murray (81 Pac. Rep., 388). Lindblom *v.* Fallett (145 Fed. Rep., 805; 76 C. C. A., 369). Lindblom *v.* Rocks (146 Fed. Rep., 660; 77 C. C. A., 86). Charlton *v.* Kelly (156 Fed. Rep., 433; 84 C. C. A., 295).

NOTE.—For citations under this head see sec. 1023 of this chapter. For statutory instructions see sec. 1505, chap. 65, of this title. For order of trial in equity see sec. 1205, chap. 39, of this title.

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When a view may be ordered.

SEC. 1020. Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent no person shall speak to them on any subject connected with the trial.

Carter Code, sec. 188; Charlton Code, sec. 188.

State *v.* Ah Lee (8 Or., 214). State *v.* Chee Gong (21 Pac. Rep., 882). State *v.* Moran (14 Pac. Rep., 419). State *v.* Keller *v.* Bley (15 Pac. Rep., 705).

Manner of keeping jury.

SEC. 1021. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Carter Code, sec. 189; Charlton Code, sec. 189.

State *v.* Shaffer (32 Pac. Rep., 545). State *v.* Olberman (55 Pac. Rep., 886).

When juror taken sick, how to proceed.

SEC. 1022. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial may begin anew; or the jury may be discharged, as the court shall direct, and a new jury then or afterwards formed.

Carter Code, sec. 190; Charlton Code, sec. 190.

The charge to the jury.

SEC. 1023. In charging the jury the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict, but it shall not present the facts of the case, but shall inform the jury that they are the exclusive judges of all questions of fact.

Carter Code, sec. 191; Charlton Code, sec. 191.

Corbus *v.* Leonhardt (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 831). Black *v.* Teeter (1 Alaska Rep., 561). Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 785). United Alaska Gold Min. Co. *v.* Muset (114 Fed. Rep., 66; 52 C. C. A., 14; 1 Alaska Rep., 794). Gibson *v.* Canadian Pac. Nav. Co. (1 Alaska Rep., 407). Dolan *v.* U. S. (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 751). Hoxsie *v.* Nodine (123 Fed. Rep., 379; 61 C. C. A., 223; 2 Alaska Rep., 752). Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43). Northern Com. Co. *v.* Nestor (138 Fed. Rep., 383; 70 C. C. A., 523; 2 Alaska Rep., 668). Lindbloom *v.* Fallett (145 Fed. Rep., 805). Northwestern S. S. Co. *v.* Griggs (146 Fed. Rep., 472). Cascaden *v.* Bartolis (146 Fed. Rep., 739). Ball *v.* U. S. (147 Fed. Rep., 32). McKay *v.* Neussler (148 Fed. Rep., 86). Whitehouse *v.* Edwards (152 Fed. Rep., 72). Vulko Perovich *v.* U. S. (205 U. S. Rep., 722; 51 L. Ed., 86). Johnston *v.* U. S. (154 Fed. Rep., 445). Charlton *v.* Kelly (156 Fed. Rep., 433).

NOTE.—*Instructions:*

Must consist of allegations of law based on allegations and proof in the case: Woodward *v.* O. R. & N. Co. (22 Pac. Rep., 1076). Knathla *v.* Oregon S. L. Ry. Co. (27 Pac. Rep., 91). Coos Bay Co. *v.* Siglin (38 Pac. Rep., 192; 53 Pac. Rep., 504).

Error to give instructions however correct as abstract propositions of law, if not based upon issues and evidence: Pearson *v.* Dryden (43 Pac. Rep., 166). Knathla *v.* Oregon S. L. Ry. Co. (27 Pac. Rep., 91). Dooley *v.* Bank of Baker City (45 Pac. Rep., 780). Emison *v.* Owyhee Ditch Co. (62 Pac. Rep., 13). Smitson *v.* S. P. Co. (60 Pac. Rep., 907). Salmon *v.* Olds (9 Or. Rep., 488). State *v.* Branton (56 Pac. Rep., 267).

A charge which usurps the province of the jury by assuming a fact in issue as established, is erroneous: State *v.* McKay (6 Pac. Rep., 648). State *v.* Whitney (7 Or. Rep., 390). Yarberg *v.* Watson (4 Pac. Rep., 296). Kelly *v.* Highfield (14 Pac. Rep., 744). Salmon *v.* Cress (29 Pac. Rep., 439).

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Hockersmith *v.* Hanley (44 Pac. Rep., 497). State *v.* Hetcher (44 Pac. Rep., 584). Finseth *v.* Suburban R. Co. (51 Pac. Rep., 84). Savage *v.* Savage (59 Pac. Rep., 461). Owens *v.* Snell (44 Pac. Rep., 827). State *v.* Bowker (38 Pac. Rep., 124). Stanley *v.* Smith (16 Pac. Rep., 174). State *v.* Swayze (3 Pac. Rep., 574). State *v.* Huffman (16 Pac. Rep., 640). Myer *v.* Thompson (18 Pac. Rep., 16). Patterson *v.* Hayden (21 Pac. Rep., 129). State *v.* Pomeroy (46 Pac. Rep., 797). State *v.* Lucas (33 Pac. Rep., 538).

An instruction that there is evidence "to the effect" or "tending to show" a certain fact, does not usurp province of jury: State *v.* Brown (41 Pac. Rep., 1042). Coos Bay R. Co. *v.* Siglin (53 Pac. Rep., 504). First Nat. Bank *v.* Com. Ass. Co. (52 Pac. Rep., 1052). Smitson *v.* S. P. Co. (60 Pac. Rep., 907).

Where defendant's negligence to be determined, instruction which takes away this right from jury, erroneous: Shobert *v.* May (66 Pac. Rep., 466).

Instruction leaving to jury question of law to decide, is erroneous: Dickie *v.* Henarie (15 Pac. Rep., 464). Larson *v.* O. R. & N. Co. (23 Pac. Rep., 974). Johnson *v.* Shively (9 Pac. Rep., 335). Christensen *v.* Nelson (63 Pac. Rep., 648).

Inconsistent or contradictory instructions should not be given: Morrison *v.* McAtee (32 Pac. Rep., 400). Smitson *v.* S. P. Co. (60 Pac. Rep., 907).

Court may give instructions in form requested for use as basis in preparing its own charge: Conlon *v.* Or. S. L. R. Co. (32 Pac. Rep., 397). Morrison *v.* McAtee (32 Pac. Rep., 400). Knathla *v.* Or. S. L. R. Co. (27 Pac. Rep., 91).

Party who has given evidence tending to sustain the issues on his part, entitled to have jury instructed on his theory of the case: Fiore *v.* Ladd (36 Pac. Rep., 572). Farmers Bank *v.* Udell (61 Pac. Rep., 837; 65 Pac. Rep., 520). Anderson *v.* North Pass L. Co. (28 Pac. Rep., 5).

If a party desire an instruction on a particular point, he must request it: Smithson *v.* S. P. Co. (60 Pac. Rep., 907). State *v.* Magers (58 Pac. Rep., 892). State *v.* Brown (53 Pac. Rep., 504). Page *v.* Finlay (8 Or. Rep., 45). Kearney *v.* Snodgrass (7 Pac. Rep., 309). State *v.* Foot You (32 Pac. Rep., 1031). Schoelhamer *v.* Rometsch (38 Pac. Rep., 344). Farmers Bank *v.* Woodall (61 Pac. Rep., 837; 65 Pac. Rep., 520).

On certain propositions of law a request therefor not necessary, and error were such not given: State *v.* Cody (23 Pac. Rep., 891).

Not error to fail to instruct that failure of defendant to testify raises no presumption of guilt, without request: State *v.* Magers (58 Pac. Rep., 892).

Mere inconsistency not ground for reversal where jury not misled: Smithson *v.* S. P. Co. (60 Pac. Rep., 907). Farmers Bank *v.* Woodall (61 Pac. Rep., 837).

Party cannot complain of giving of instruction which he himself had requested: Wesco *v.* Kern (59 Pac. Rep., 548; 60 Pac. Rep., 563). Mullaney *v.* Evans (54 Pac. Rep., 886). State *v.* Branton (56 Pac. Rep., 267). Rawson *v.* Stewart (29 Pac. Rep., 792). Moorehouse *v.* Donaca (13 Pac. Rep., 112).

Not error to refuse instruction already given by other parts of the charge: Savage *v.* Savage (59 Pac. Rep., 461). State *v.* Tucker (61 Pac. Rep., 894). State *v.* Branton (56 Pac. Rep., 267). State *v.* Brown (41 Pac. Rep., 1042). Anderson *v.* N. P. L. Co. (28 Pac. Rep., 5). Roth *v.* N. P. L. Co. (22 Pac. Rep., 842). State *v.* Roberts (13 Pac. Rep., 896).

Instructions should be short and direct: Lagrande Nat. Bank *v.* Blunt (41 Pac. Rep., 659). Weeklund *v.* So. Or. Co. (27 Pac. Rep., 260). Knathla *v.* Or. S. L. Co. (27 Pac. Rep., 91). Anderson *v.* N. P. L. Co. (28 Pac. Rep., 5). Conlon *v.* Or. S. L. R. Co. (32 Pac. Rep., 397). Morrison *v.* McAtee (32 Pac. Rep., 400).

Not error to append to an instruction appended an explanation in writing on any matter pertinent to case: Knapp *v.* King (6 Or. Rep., 250).

Not error to refuse instruction correctly stating law as to contract in evidence, but ignores fact of another contract in evidence to which different rule would apply: Krewson *v.* Purdum (11 Pac. Rep., 281; 16 Pac. Rep., 480).

Instructions must be taken as a whole: Smitson *v.* S. P. Co. (60 Pac. Rep., 907). State *v.* Bartmess (54 Pac. Rep., 167). Matlock *v.* Wheeler (43 Pac. Rep., 867). State *v.* Tarter (37 Pac. Rep., 53). State *v.* Hanson (35 Pac. Rep., 976). State *v.* Emerson (10 Or. Rep., 462). Savage *v.* Savage (59 Pac. Rep., 461). Perham *v.* Port. Elec. Co. (54 Pac. Rep., 14). State *v.* Morey (35 Pac. Rep., 665). Farmers Bank *v.* Woodell (61 Pac. Rep., 837; 65 Pac. Rep., 520). Wellman *v.* Or. S. L. Co. (28 Pac. Rep., 625). Wadhams *v.* Inman (63 Pac. Rep., 11).

Instruction not erroneous because it uses unusual references, if not of character to mislead intelligent jury: First Nat. Bank *v.* Fire Assn. (50 Pac. Rep., 568; 53 Pac. Rep., 8).

Statement by judge that parties had agreed on law of case and that he would give certain instructions resented by defendant does not give undue prominence to defendant's case: First Nat. Bank *v.* Fire Assn. (50 Pac. Rep., 568; 53 Pac. Rep., 8).

Statement in charge that jury would have to remain together until they agreed, not objectionable: State *v.* Hawkins (23 Pac. Rep., 475). State *v.* Saunders (12 Pac. Rep., 441).

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Language of similar character may, however, be so strong as to be prejudicial: State *v.* Ivanhoe (57 Pac. Rep., 317).

Instruction which throws burden of proof on defendant in a criminal case, is error: State *v.* Huffman (16 Pac. Rep., 640).

Court should not instruct by reading opinion of another court; court may copy and deliver portions applicable: Stewart *v.* Hunter (16 Pac. Rep., 876).

Where evidence is admitted as competent for one purpose but not for another, jury should be instructed for what purpose they may consider it: State *v.* Fitz Hugh (2 Or. Rep., 234). Josephi *v.* Furnish (41 Pac. Rep., 424).

Where circumstantial evidence alone relied on and no evidence of manner of killing, law of manslaughter should be stated to jury: State *v.* Magers (57 Pac. Rep., 197).

Matters within judicial knowledge of court should be declared to the jury: State *v.* Magers (57 Pac. Rep., 197).

Phrase "You may consider this a circumstance in determining the guilt or innocence of defendant," does not imply that innocence is a fact to be established: State *v.* O'Neal (9 Pac. Rep., 284).

Instruction that in weighing defendant's testimony same rules govern as to other witnesses, except that interest accused has in termination of case may be considered, not erroneous: State *v.* Tarter (37 Pac. Rep., 53).

Instruction which, in effect, tells jury to apply their own judgment and experience in determining facts from conflicting testimony, not erroneous: Willis *v.* Lance (43 Pac. Rep., 384, 487).

In action of false imprisonment: Bingham *v.* Lipman, Wolfe & Co. (67 Pac. Rep., 98). Jester *v.* Lipman, Wolfe & Co. (67 Pac. Rep., 102).

In action as to false representations as to mineral claim: David *v.* Moore (79 Pac. Rep., 415).

In action against railroad company for injury by fire: Anderson *v.* Or. R. Co. (77 Pac. Rep., 119).

As to carriers' liability: Normile *v.* O. R. & N. Co. (69 Pac. Rep., 928).

As to injury by carrier: Anderson *v.* City & Suburban R. Co. (71 Pac. Rep., 659). Maynard *v.* O. R. & N. Co. (78 Pac. Rep., 983).

As to injury by electricity: Chaperon *v.* Port. G. E. Co. (67 Pac. Rep., 928). Boyd *v.* Portland G. E. Co. (68 Pac. Rep., 810).

Injury to servant: Ringue *v.* Or. Coal & Nav. Co. (75 Pac. Rep., 703). Scott *v.* Astoria R. Co. (72 Pac. Rep., 594). Bowers *v.* Starr Logging & Lbr. Co. (68 Pac. Rep., 516). Geldard *v.* Marshall (84 Pac. Rep., 803).

Injury by railroad: Hecker *v.* Or. R. Co. (66 Pac. Rep., 270). Turney *v.* S. P. Co. (75 Pac. Rep., 144; 76 Pac. Rep., 1080).

As to what constitutes a quartz claim: Lagrande Inv. Co. *v.* Shaw (72 Pac. Rep., 795).

As to necessity of valid location as condition precedent in action on contract of sale: Legrande Inv. Co. *v.* Shaw (72 Pac. Rep., 795).

In action of libel and slander: Wooley *v.* Plain Dealer Pub. Co. (84 Pac. Rep., 473).

As to presumption of natural death on suit for death benefit: Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

In action on official bond: Lake County *v.* Neilon (74 Pac. Rep., 212). Baker County *v.* Huntington (87 Pac. Rep., 1036).

As to proof of presentation of claim to executor: Goltra *v.* Penland (77 Pac. Rep., 129). Bull *v.* Payne (84 Pac. Rep., 697).

In action involving boundaries: First Nat. Bank *v.* McDonald (70 Pac. Rep., 901).

In contract for sale of land: Graham *v.* Merchant (72 Pac. Rep., 1088).

As to specialists in surgery: Beadle *v.* Payne (80 Pac. Rep., 903).

Woman subject to same rules as to negligence as man is: Busch *v.* Robinson (81 Pac. Rep., 237).

Not duty of court to charge on all collateral matters: State *v.* Smith (83 Pac. Rep., 86).

As to negligent construction by railroad of fill over water course: Price *v.* Or. R. Co. (83 Pac. Rep., 843).

Court not deprived of right to correct mistatement of defendant's attorney in argument: State *v.* Lane (84 Pac. Rep., 804).

Inconsistent instructions on contract: Neis *v.* Whitaker (84 Pac. Rep., 699).

In action for deceit, as to proof to make out fraud: Kabat *v.* Moore (85 Pac. Rep., 506).

As to payment: Boothe *v.* Scriber (87 Pac. Rep., 887).

Refusal to give requested instructions not error where law given fully in general instructions: Baines *v.* Coos Bay R. & E. R. & N. Co. (89 Pac. Rep., 371).

As to authorization to execute lease: Marks *v.* Herran (83 Pac. Rep., 385).

Court's remarks in action for alienation of affections, held not cured by subsequent instructions: Keen *v.* Keen (90 Pac. Rep., 147).

As to statute of limitations: Gilman *v.* Cochran (90 Pac. Rep., 1001).

As to evidence of verbal modification of written agreement: Latourette *v.* Meldrun (90 Pac. Rep., 503).

As to use of public lands as highway: Montgomery *v.* Somers (90 Pac. Rep., 674).

Where instruction as whole clearly states the law it will not be held insufficient on account of wording of a portion: Ridings *v.* Marion County (91 Pac. Rep., 22).

Where information charges offense which includes a lesser, court not



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bound to charge without request that jury may find defendant guilty of lesser crime: State *v.* Rayner (91 Pac. Rep., 301).

Court need not give instructions in any set form of language; sufficient to give substance, if proper: Payne *v.* Whatcom Co. R. & Lt. Co. (91 Pac. Rep., 1084).

Instruction with relation to credibility of accused as witness, held erroneous: State *v.* Bartlett (93 Pac. Rep., 243).

Defendant entitled to such instructions as would thoroughly present his theory of case under the evidence: State *v.* Doris (94 Pac. Rep., 45).

Instruction in personal injury case held proper under conditions of case: Pereira *v.* Star Sand Co. (94 Pac. Rep., 835).

Reasonable doubt: State *v.* Morey (35 Pac. Rep., 665). State *v.* Roberts (13 Pac. Rep., 896). State *v.* Glass (5 Or. Rep., 73). State *v.* Megorden (88 Pac. Rep., 306).

Directing verdict: Smith *v.* Shattuck (7 Pac. Rep., 335). Owens *v.* Snell (44 Pac. Rep., 827). State *v.* Pomeroy (46 Pac. Rep., 797). Coffin *v.* Hutchinson (30 Pac. Rep., 424). O. R. & N. Co. *v.* Hertzberg (37 Pac. Rep., 1019). Blackburn *v.* S. P. Co. (55 Pac. Rep., 225). Willis *v.* Holmes (42 Pac. Rep., 989). North Pac. Lbr. Co. *v.* Spore (75 Pac. Rep., 890). Wagner *v.* City of Portland (67 Pac. Rep., 300). Goss *v.* N. P. R. Co. (87 Pac. Rep., 149). Multnomah Co. *v.* Willamette Towing Co. (89 Pac. Rep., 389).

Exceptions to instructions: Murray *v.* Murray (6 Or. Rep., 22). Langford *v.* Jones (22 Pac. Rep., 1064). Jenson *v.* Foss (33 Pac. Rep., 535). Salmon *v.* Cress (29 Pac. Rep., 439). Nickum *v.* Gaston (35 Pac. Rep., 31). Kearney *v.* Snodgrass (7 Pac. Rep., 309). Thompson *v.* Backenstos (1 Or. Rep., 17). Williamson *v.* N. P. Lbr. Co. (73 Pac. Rep., 7). Scott *v.* Astoria R. Co. 72 Pac. Rep., 594).

Taking written charge to jury room: Smith *v.* Lownsdale (6 Or. Rep., 79).

Instructions to jury: Lindblom *v.* Fallett (145 Fed. Rep., 805; 76 C. C. A., 369). Lindblom *v.* Rocks (146 Fed. Rep., 660; 77 C. C. A., 86). Charlton *v.* Kelly (156 Fed. Rep., 433; 84 C. C. A., 295).

How jury kept while deliberating; officer to be sworn.

SEC. 1024. After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by the order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberation or the verdict agreed on. Before any officer takes charge of a jury this section shall be read to him, and he shall be then sworn to conduct himself according to its provisions, to the utmost of his ability.

Carter Code, sec. 192; Charlton Code, sec. 192.

Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 722). State *v.* Garrand (5 Or. Rep., 228). State *v.* Ivanhoe (57 Pac. Rep., 317). Nicholson *v.* Smith (14 Pac. Rep., 40).

Food and lodging of jurors.

SEC. 1025. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the marshal, at the expense of the United States.

Carter Code, sec. 193; Charlton Code, sec. 193.

What papers jury may take.

SEC. 1026. Upon retiring for deliberation the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession). They may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

Carter Code, sec. 194; Charlton Code, sec. 194.

Smith *v.* Lownsdale (6 Or. Rept., 79).

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When jury may return for information.

SEC. 1027. After the jury have retired for deliberation, if they desire to be informed on any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the instruction required shall be given by the court in the presence of or after notice to the parties or their attorneys.

Carter Code, sec. 195; Charlton Code, sec. 195.

People *v.* Trim (37 Calif. Rep., 274). | People *v.* Perry (4 Pac. Rep., 572).
Redman *v.* Gulnac (5 Calif. Rep., 148). |

When jury may be discharged without giving verdict.

SEC. 1028. Except as provided in sections one thousand and twenty-two and one thousand and thirty-one of this title, or in case of some accident or calamity requiring their discharge, the jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, unless by the consent of both parties entered in the journal, or unless at the expiration of such period as the court deem proper it satisfactorily appears that there is no probability of an agreement.

Carter Code, sec. 196; Charlton Code, sec. 196.

State *v.* Shaffer (32 Pac. Rep., 545). | Ex parte Tice (49 Pac. Rep., 1038).
State *v.* Rinehart (38 Pac. Rep., 822). |

When new trial may be had if jury discharged.

SEC. 1029. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

Carter Code, sec. 197; Charlton Code, sec. 197.

Court deemed open until jury gives verdict or is discharged.

SEC. 1030. While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Carter Code, sec. 198; Charlton Code, sec. 198.
Ex parte Tice (49 Pac. Rep., 1038).
NOTE.—As to nonjudicial days, see sec. 1548, chap. 71, of this title.

If juror absent when jury return, jury to be discharged.

SEC. 1031. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear the rest shall be discharged without giving a verdict.

Carter Code, sec. 199; Charlton Code, sec. 199.

Manner of giving verdict.

SEC. 1032. If the jury appear they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative he shall, on being required, declare the same.

Carter Code, sec. 200; Charlton Code, sec. 200.

Jury may be polled or insufficient verdict corrected.

SEC. 1033. When a verdict is given and before it is filed, the jury may be polled on the request of either party, for which purpose each shall be asked whether it be his verdict; if any juror answer in the negative, the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

Carter Code, sec. 201; Charlton Code, sec. 201.

Osborn *v.* Morris (28 Pac. Rep., 70). | State *v.* Waymire (97 Pac. Rep., 46).

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When verdict complete and jury discharged, verdict to be in writing and entered on the journal.

SEC. 1034. When the verdict is given, and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete, and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

Carter Code, sec. 202; Charlton Code, sec. 202.

Osburn *v.* Morris (28 Pac. Rep., 70). Fiore *v.* Ladd (46 Pac. Rep., 144). Nicholson *v.* Smith (14 Pac. Rep., 40). Cline *v.* Broy (1 Or. Rep., 89). Oregonian R. Co. *v.* Ore. Steam Nav. Co. (3 Or. Rep., 181).

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# CHAPTER EIGHTEEN.

## OF THE VERDICT.

Sec.
1035. Definition of verdict general or special.
1036. In actions for the recovery of specific personal property.
1037. When jury may give general or special verdict.
1038. Special verdict to control general.
1039. When counterclaim pleaded in the answer.

June 6, 1900.
31 Stat. L., 363. R. S., 2d Supp., pp. 1236–1237.
Definition of verdict general or special.

SEC. 1035. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Carter Code, sec. 203; Charlton Code, sec. 203.

Wachsmuth *v.* Routledge (59 Pac. Rep., 455).
*Appeal and error*: Gilmore *v.* McBride (156 Fed. Rep., 464; 84 C. C. A., 274). Thorndyk *v.* Alaska Perseverance Mining Co. (164 Fed. Rep., 657; 90 C. C. A., 473). Hemple *v.* Raymond (144 Fed. Rep., 796; 75 C. C. A., 526).

NOTE.—As to aider by verdict, see sec. 929, chap. 11, ante.

In actions for the recovery of specific personal property.

SEC. 1036. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

Carter Code, sec. 204; Charlton Code, sec. 204.

Capital Lbr. Co. *v.* Hall (10 Or. Rep., 202). Prescott *v* Heilner (9 Pac. Rep., 403). Phipps *v.* Taylor (16 Pac. Rep., 171). Geuille *v.* Won Fook (11 Pac. Rep., 277). Huffman *v.* Knight (60 Pac. Rep., 207). Sharp *v.* Johnson (63 Pac. Rep., 485). Morehouse *v.* Donaca (13 Pac. Rep., 112). Jones *v.* Snyder (8 Or. Rep., 127). Smith *v.* Smith (21 Pac. Rep., 440). Yick Kee *v.* Dunbar (26 Pac. Rep., 275). Corbell *v.* Childers (21 Pac. Rep., 670). Nun *v.* Bird (59 Pac. Rep., 808). Feller *v.* Feller (66 Pac. Rep., 468).

When jury may give general or special verdict.

SEC. 1037. In every action for the recovery of money only or specific real property, the jury in their discretion may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing. The special

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verdict or finding shall be filed with the clerk and entered in the journal, as provided in chapter seventeen.

Carter Code, sec. 205; Charlton Code, sec. 205.

Bennett *v.* Harkrader (158 U. S., 444; 1 Alaska Rep., 832). Shoup *v.* Marks (128 Fed. Rep., 32; 62 C. C. A., 540; 2 Alaska Rep., 752). Begenish *v.* Gates (2 Alaska Rep., 511). Reans *v.* McAlpine (2 Alaska Rep., 165). Elbing *v.* Hastings (3 Alaska Rep., 127). Swift *v.* Mulkey (12 Pac. Rep., 76). Knathla *v.* Or. S. L. R. Co. (27 Pac. Rep., 91). White *v.* White (55 Pac. Rep., 645). Beekman *v.* Jackson County (22 Pac. Rep., 1074). Roahr *v.* Isaacs (8 Or. Rep., 454). Huber *v.* Miller (68 Pac. Rep., 400). Busch *v.* Robinson (81 Pac. Rep., 237).

Special verdict to control general.

SEC. 1038. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Carter Code, sec. 206; Charlton Code, sec. 206.

Rolfes *v.* Russel (5 Or. Rep., 405). Loewenberg *v.* Rosenthal (22 Pac. Rep., 601).

When counterclaim pleaded in the answer.

SEC. 1039. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

Carter Code, sec. 207; Charlton Code, sec. 207.

Fiore *v.* Ladd (46 Pac. Rep., 144).

## CHAPTER NINETEEN.

### TRIAL BY THE COURT.

Sec.
1040. Trial by jury, how waived.
1041. Decisions of the court, how made and when filed.
1042. Order of proceedings, and effect of finding.

June 6, 1900.
31 Stat. L., 362–364.
R. S., 2d Supp., 1287.
Trial by jury, how waived.

SEC. 1040. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

First: By failing to appear at the trial;

Second: By written consent, in person or by attorney, filed with the clerk;

Third: By oral consent in open court, entered in the minutes.

Carter Code, sec. 208; Charlton Code, sec. 208.

Shields *v.* Mongollon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 695). Overgaard *v.* Westerberg (3 Alaska Rep., 178). Wilkes *v.* Cornelius (28 Pac. Rep., 135). Johnson *v.* Shofner (31 Pac. Rep., 254). Amer. Mtg. Co. *v.* Hutchinson (24 Pac. Rep., 515). Moody *v.* Richards (45 Pac. Rep., 777). Patty *v.* Salem Flouring Mill Co. (100 Pac. Rep., 298).

Decisions of the court, how made and when filed.

SEC. 1041. Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk during the term or within twenty days thereafter. The decision shall state the facts found and the conclusion of law separately, without argument or reason therefor. Such decision shall be entered in the journal and judgment entered thereon accordingly. The court may deliver any argument or reason in support of such decision, either orally or in writing, separate from the decision, and file the same with the clerk.

Carter Code, sec. 209; Charlton Code, sec. 209.

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Ex parte Cooper (143 U. S. Rep., 472; 1 Alaska Rep., 701).

Juneau Water Co. *v.* Jualpa Co. (3 Alaska Rep., 383, 387). "On trial of an equity suit the judge gave a written opinion, wherein he discussed both law and the facts. Held, in above case, that such opinion was merely a written argument or statement of reasons for the judge's conclusions, and did not constitute the formal findings of fact and conclusions of law required by sections 1041 and 1204 of the Alaska Code of Civil Procedure."

*There must be findings of fact sufficient to sustain the judgment*: Merchant's Nat. Bank *v.* Pope (26 Pac. Rep., 662). Fink *v.* Kenyon Road Co. (5 Or. Rep., 310). Drainage Dist. *v.* Crow (26 Pac. Rep., 845). Pangra *v.* Wheeler (34 Pac. Rep., 354). Jameson *v.* Coldwell (35 Pac. Rep., 245). Clark *v.* Bundey (44 Pac. Rep., 282). Moody *v.* Richards (45 Pac. Rep., 777). McFadden *v.* Friendly (9 Or. Rep., 222). Veulleumier *v.* Or. W. P. & R. Co. (105 Pac. Rep., 706).

*Refusal to make a finding of fact material in the case, where evidence establishes it, a good ground of exception*: Hicklan *v.* McClear (22 Pac. Rep., 1057). Luse *v.* Isthmus Transit R. Co. (6 Or. Rep., 130). Umatilla Irr. Co. *v.* McClear (22 Pac. Rep., 1057). Noland *v.* Bull (33 Pac. Rep., 983). Harris *v.* Harsch (46 Pac. Rep., 141). Reade *v.* Pac. Supply Assn. (66 Pac. Rep., 444). Moody *v.* Richards (45 Pac. Rep., 777). Daly *v.* Larson (46 Pac. Rep., 143). Breding *v.* Williams (54 Pac. Rep., 206).

*Where there is no bill of exceptions the only question the appellate court can consider is whether the findings support the judgment*: Allen *v.* Leavens (37 Pac. Rep., 488). Noland *v.* Bull (33 Pac. Rep., 983). Richardson *v.* Dunlap (38 Pac. Rep., 1). Hicklin *v.* McClear (22 Pac. Rep., 1057). Kane *v.* Rippey (29 Pac. Rep., 1005).

*Finding as to authority to sign note not a conclusion of law as to what might be done under delegated power, but a finding of fact on authority*: Reed *v.* Pac. Supply Assn. (66 Pac. Rep., 443).

*Findings of fact to be deemed a verdict and can not be set aside on appeal if there is any evidence to support them*: Bruce *v.* Phoenix Ins. Co. (34 Pac. Rep., 16). Williams *v.* Gallick (3 Pac. Rep., 469). Liebe *v.* Nicolai (48 Pac. Rep., 172). Bartel *v.* Matthias (24 Pac. Rep., 918). Lovejoy *v.* Chapman (32 Pac. Rep., 687). Kyle *v.* Rippey (25 Pac. Rep., 141). Hallock *v.* Portland (8 Or. Rep., 29).

*If parties agree as to facts and so stipulate, no issue except as to conclusions of law, hence statement of facts by court unnecessary*: Frush *v.* East Portland (6 Or. Rep., 282).

*Above doubted in*: Moody *v.* Richards (45 Pac. Rep., 777).

*Where court directs judgment but fails to give decision in writing, as directed by code, should be set aside*: Bush *v.* Geisy (19 Pac. Rep., 123).

*Findings to be made on issues presented by pleadings*: N. P. R. Co. *v.* Spencer (108 Pac. Rep., 180).

*Where language of finding equivocal, construction which accords with pleadings and supports judgment should be adopted*: Whitlock *v.* Menciet (10 Or. Rep., 168).

*Finding of fact and conclusion of law are "separately stated" when not blended with each other so as to produce uncertainty and confusion as to distinct and separate operation of each, though they need not be under separate heads*: Weissman *v.* Russel (10 Or. Rep., 75).

*A finding in supplementary proceedings held an order for judgment*: State *v.* Gutridge (80 Pac. Rep., 98).

*Court should make findings covering all material issues*: Jennings *v.* Frazer (80 Pac. Rep., 1011).

*No findings necessary on admitted facts*: Jennings *v.* Frazer (80 Pac. Rep., 1011).

*Need not find on question of assignment where facts found supporting judgment for defendant*: Lewis *v.* First Nat. Bank (78 Pac. Rep., 990).

*Special findings must be requested*: Reed *v.* Pac. Coast Home Sup. Assn. (66 Pac. Rep., 443). Jennings *v.* Frazer (80 Pac. Rep., 1011).

*Findings as to ratification held not to sustain judgment*: Male *v.* Sehant (69 Pac. Rep., 137).

*Recital in findings held to import verity and preclude inquiry*: Martin *v.* Eagle Creek Dev. Co. (69 Pac. Rep., 216).

*Finds can only be disturbed where evidence insufficient as a matter of law*: Good *v.* Smith (76 Pac. Rep., 354). Gorman *v.* McGowan (76 Pac. Rep., 769). Scott *v.* Ford (78 Pac. Rep., 742; 80 Pac. Rep., 899).

*Statement in finding of fact that in creditor's claim against bankrupt no credit had been given for pledged property, held tantamount to finding creditor not guilty of fraud*: Lewis *v.* First Nat. Bank (78 Pac. Rep., 990).

*When evidence of plaintiff's witnesses contradictory and false in part, decree of dismissal proper*: Payton *v.* Burns (69 Pac. Rep., 134).

*Finding that sale bona fide and passed title covered issue of fraud*: Jennings *v.* Frazer (80 Pac. Rep., 1011).

*Deduction by court in its opinion that counsel claimed cause of action based entirely on original contract, entitled to consideration as assertion of solemn admission*: Haywood Bros. & Wakefield Co. *v.* Doernbecker Mfg. Co. (86 Pac. Rep., 357).

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SEC. 1042. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the fact shall be deemed a verdict, and may be set aside in the same manner and for the same reasons, as far as applicable, and a new trial granted.

Order of proceedings, and effect of findings.

Carter Code, sec. 210; Charlton Code, sec. 210.

McIntosh *v.* Price (121 Fed. Rep., 716; 58 C. C. A., 136; 2 Alaska Rep., 756). Moore *v.* Moore (121 Fed. Rep., 737; 58 C. C. A., 19; 2 Alaska Rep., 756). Overgaard *v.* Westerberg (3 Alaska Rep., 178). Howe *v.* Patterson (5 Or. Rep., 354). Roy *v.* Horsley (6 Or. Rep., 385). Hallock *v.* Portland (8 Or. Rep., 29). McDonald *v.* Am. Mtg. Co. (21 Pac. Rep., 883). Hicklin *v.* McClear (22 Pac. Rep., 1057). Rosenblat *v.* Perkins (22 Pac. Rep., 598). Kyle *v.* Rippey (25 Pac. Rep., 141). Bartell *v.* Matthias (24 Pac. Rep., 918). In re Fernstern Macher *v.* State (25 Pac. Rep., 142). Drainage Dist. *v.* Crow (26 Pac. Rep., 855). Hughs *v.* Holman (32 Pac. Rep., 298). Nowland *v.* Bull (33 Pac. Rep., 983). Wilson *v.* Wilson (38 Pac. Rep., 189). Liebe *v.* Nicolai (48 Pac. Rep., 172). Miller *v.* Hirschberg (40 Pac. Rep., 506). Ferguson *v.* Reiger (73 Pac. Rep., 1040). Freeman *v.* Trummer (91 Pac. Rep., 1077). Scott *v.* Ford (97 Pac. Rep., 99). Courtney *v.* Bridal Veil Box Factory (105 Pac. Rep., 896). N. P. R. Co. *v.* Spencer (108 Pac. Rep., 180).

NOTE.—As to causes for setting verdict aside see sec. 1058, chap. 22, of this title.

## CHAPTER TWENTY.

### TRIAL BY REFEREES.

Sec.
1043. The trial of any issue may be referred by consent.
1044. When reference may be ordered by the court.
1045. Number of referees, and how chosen.
1046. When chosen by the court, qualifications of.
1047. Right and mode of challenge to referees when chosen by the court.
1048. Proceedings same as in trial by court.
1049. What report to contain; evidence to accompany it.
1050. Motion to set aside report or for judgment thereon.
1051. Proceedings thereon.

SEC. 1043. All or any of the issues in the action, whether of fact or law, or both, may be referred to a referee or referees upon the written consent of the parties.

June 6, 1900.
31 Stat. L., 364–365.
R. S., 2d Supp., 1238–1239.
The trial of any issue may be referred by consent.

Carter Code, sec. 211; Charlton Code, sec. 211.
U. S. *v.* Pratt (3 Alaska Rep., 412).

SEC. 1044. When the parties do not consent in an action at issue and to be tried by the court without a jury, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

When reference may be ordered by the court.

First. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or,

Second. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

Third. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

Fourth. When it is necessary for the information of the court in a special proceeding.

Carter Code, sec. 212; Charlton Code, sec. 212.

Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 2 Alaska Rep., 740). Tribou *v.* Strowbridge (7 Or. Rep., 156). McDonald *v.* Am. Mtg. Co. (21 Pac. Rep., 883). Trummer *v.* Conrad (51 Pac. Rep., 447). Bigne *v.* David (21 Pac. Rep., 52); Mitchell *v.* Oregon Flax Assn. (63 Pac. Rep., 881). Salem Land & T. Co. *v.* Anson (69 Pac. Rep., 675).

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Number of referees and how chosen.

SEC. 1045. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

Carter Code, sec. 213; Charlton Code, sec. 213.

When chosen by the court, qualifications of.

SEC. 1046. When the appointment of referees is made by the court or judge, each referee shall be—

First. Qualified as a juror as provided by statute;

Second. Competent as a juror between the parties: *Provided*, That in a reference to take and report testimony only, the same may be made to any competent disinterested person, regardless of the foregoing qualifications.

Carter Code, sec. 214; Charlton Code, sec. 214.
Puffer *v.* Am. Cent. Ins. Co. (87 Pac. Rep., 523).
NOTE.—As to qualification see sec. 2120, chap. 4, Code Criminal Procedure.

Right and mode of challenge to referees when chosen by the court.

SEC. 1047. When the referees are chosen by the court each party shall have the same right of challenge as to such referees, to be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

Carter Code, sec. 215; Charlton Code, sec. 215.
NOTE.—See secs. 1007 to 1010, chap. 16, ante.

Proceedings same as in trial by court.

SEC. 1048. Subject to the limitations and directions prescribed in the order of reference, the trial by referee shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and to punish all violations thereof upon such trial, and to compel the attendance of witnesses and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

Carter Code, sec. 216; Charlton Code, sec. 216.

Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 2 Alaska Rep., 740). U. S. *v.* Pratt (3 Alaska Rep., 412). Stimson *v.* Estees (3 Or. Rep., 521). Dundee Mtg. Co. *v.* Hughs (124 U. S. Rep., 160). Baker *v.* Woodward (6 Pac. Rep., 173). Crown Point Min. Co. *v.* Crimson (65 Pac. Rep., 87). Bohlman *v.* Coffin (4 Or. Rep., 314).

What report to contain; evidence to accompany it.

SEC. 1049. The report of the referee shall state the facts found, and when the order of reference includes an issue of law it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial, and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

Carter Code, sec. 217; Charlton Code, sec. 217.

Trummer *v.* Conrad (51 Pac. Rep., 447). Van Bibber *v.* Fields (36 Pac. Rep., 526). Osburn *v.* Graves (6 Pac. Rep., 227). Sutton *v.* Clarke (67 Pac. Rep., 742). State *v.* Frost (86 Pac. Rep., 177). Puffer *v.* Am. Cent. Ins. Co. (87 Pac. Rep., 523).

Motion to set aside report or for judgment thereon.

SEC. 1050. The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following.

Carter Code, sec. 218; Charlton Code, sec. 218.

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Proceedings thereon.

SEC. 1051. The court may affirm or set aside the report either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

Carter Code, sec. 219; Charlton Code, sec. 219.

Hannar *v.* Coffin (1 Or. Rep., 99). O'Leary *v.* Fargher (4 Pac. Rep., 335). Fahey *v.* Landsay (8 Or. Rep., 474). State *v.* Grover (10 Or. Rep., 66). Nessley *v.* Ladd (45 Pac. Rep., 904). Goldsmith *v.* Elwert (50 Pac. Rep., 867). Wollenberg *v.* Minard (62 Pac. Rep., 532). Merchant's Nat. Bank *v.* Pope (26 Pac. Rep., 622). Lovejoy *v.* Chapman (32 Pac. Rep., 687). Bruce *v.* Phoenix Ins. Co. (34 Pac. Rep., 13). Liebe *v.* Nicolai (48 Pac. Rep., 172). Sutton *v.* Clarke (67 Pac. Rep., 742).

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# CHAPTER TWENTY-ONE.

## OF EXCEPTIONS.

Sec.
1052. Definition of exception; must be material.
1053. Exceptions, how stated and settled.
1054. No particular form required.
1055. To be signed by the judge and filed. When exceptions need not be taken or allowed.
1056. What deemed excepted to.

June 6, 1900.
31 Stat. L., 365–366.
R. S., 2d Supp., 1239.
Definition of exception; must be material.

SEC. 1052. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

Carter Code, sec. 220; Charlton Code, sec. 220.

Schooner *Sylvia Handy v.* U. S. (143 U. S. Rep., 513; 1 Alaska Rep., 743). Maloney *v.* Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 743). Woods *v.* Beaton (1 Alaska Rep., 344). Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 726). Benks *v.* Wilson (1 Alaska Rep., 241). Moore *v.* Steel Smith (1 Alaska Rep., 121). Owens *v.* U. S. (130 Fed. Rep., 279; 64 C. C. A., 525; 2 Alaska Rep., 683). Woods *v.* Beaton (2 Alaska Rep., 1). Alaska Com. Co. *v.* Dinkelspiel (126 Fed. Rep., 164; 61 C. C. A., 108; 2 Alaska Rep., 723). Lindblom *v.* Fallett (145 Fed. Rep., 805; 76 C. C. A., 369). N. W. S. S. Co. *v.* Griggs (146 Fed. Rep., 472). Ball *v.* U. S. (147 Fed. Rep., 32). Vulko Perovich *v.* U. S. (205 U. S. Rep., 722; 51 L. Ed., 86). Alaska Treadwell G. M. Co. *v.* Cheny (162 Fed. Rep., 593). Cook *v.* Klonas (164 Fed. Rep., 529).

*Bill of exceptions*: State *v.* Drake (4 Pac. Rep., 1204). State *v.* McGinnis (20 Pac. Rep., 235). State *v.* Cody (24 Pac. Rep., 895). State *v.* Che Gong (21 Pac. Rep., 882). State *v.* Childers (49 Pac. Rep., 801). State *v.* Guglielmo (80 Pac. Rep., 103). State *v.* Eggleston (77 Pac. Rep., 738). Nelson *v.* U. S. (30 Fed. Rep., 113). Scott *v.* Cook (1 Or. Rep., 25). Oregonian R. Co. *v.* Wright (10 Or. Rep., 166). Ex parte Wachline (51 Pac. Rep., 1094). Fisher *v.* Kelly (38 Pac. Rep., 67). Roberts *v.* Parrish (22 Pac. Rep., 136). Farrell *v.* Or. G. M. Co. (49 Pac. Rep., 876). Trummer *v.* Konrad (51 Pac. Rep., 447). Osburn *v.* Graves (6 Pac. Rep., 227). Van Bibber *v.* Fields (36 Pac. Rep., 526). Balfour *v.* Day (52 Pac. Rep., 510). Ankenny *v.* Fairview Milling Co. (10 Or. Rep., 395). Mitchell *v.* Powers (19 Pac. Rep., 647). Reynolds *v.* Jackson Co. (53 Pac. Rep., 1072). State *v.* Mack (25 Pac. Rep., 639). Oliver *v.* Or. Sugar Co. (76 Pac. Rep, 1086). Miller *v.* Head Camp (77 Pac. Rep., 83). Casto *v.* Murray (81 Pac. Rep., 388). State *v.* Miller (81 Pac. Rep., 1142). Ausplund *v.* Ætna Indemnity Co. (81 Pac. Rep., 577). McKinnon *v.* Higgins (81 Pac. Rep., 581). Ausplund *v.* Higgins (82 Pac. Rep., 12). Baker

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County *v.* Huntington (87 Pac. Rep., 1036). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 389). Scott *v.* Christiansen (89 Pac. Rep., 376). First Nat. Bank *v.* McCullough (93 Pac. Rep., 367).

*Exhibits*: Morrison *v.* Crawford (7 Or. Rep., 472). Roberts *v.* Parrish (22 Pac. Rep., 136). Oregonian R. Co. v. Wright (10 Or. Rep., 162)).

*Error must affirmatively appear*: Kelly *v.* Highfield (14 Pac. Rep., 744). Stanley *v.* Smith (16 Pac. Rep., 174). Tucker *v.* Constable (19 Pac. Rep., 13). State *v.* Gallo (23 Pac. Rep., 264). State *v.* Bartmess (54 Pac. Rep., 167). Craft *v.* Dallas City (27 Pac. Rep., 163.) French Live Stock Co. *v.* Springer (58 Pac. Rep., 102). O'Connor *v.* Van Hoy (45 Pac. Rep., 762). McMahon *v.* Duffee (59 Pac. Rep., 184). Nickum *v.* Gaston (33 Pac. Rep., 671). Cleveland Oil Co. *v.* Norwich Ins. Soc. (55 Pac. Rep., 435). Dubois *v.* Perkins (27 Pac. Rep., 1034). Durkee *v.* Carr (63 Pac. Rep., 117). Hart *v.* Territory (1 Or. Rep., 123). *The Victorian No. 2* (41 Pac. Rep., 1103). State *v.* Mason (28 Pac. Rep., 130).

*To be particularly stated, etc.*: Richards *v.* Fanning (5 Or. Rep., 356). State *v.* Clemens (14 Pac. Rep., 410). O'Connor *v.* Van Hoy (45 Pac. Rep., 762). Eaton *v.* O. R. & N. Co. (30 Pac. Rep., 311). State *v.* Murray (5 Pac. Rep., 55). Tucker *v.* Salem Flour Mill Co. (16 Pac. Rep., 426). State *v.* Jarvis, 23 Pac. Rep., 251). Janeway *v.* Holsten (23 Pac. Rep., 850). McQuade *v.* Portland & Van C. R. Co. (25 Pac. Rep., 26). Reynolds *v.* Jackson County (53 Pac. Rep., 1072). Fiore *v.* Ladd (29 Pac. Rep., 435). State *v.* Drake (4 Pac. Rep., 1204). Hedin *v.* Surbur R. Co. (37 Pac. Rep., 540). Hamilton *v.* Gordon (30 Pac. Rep., 495). Johnson *v.* Oregon S. L. R. Co. (31 Pac. Rep., 283). State *v.* Jackson (9 Or. Rep., 475). Atterberry *v.* Port & W. V. R. Co. (22 Pac. Rep., 527). Woods *v.* Courtney (17 Pac. Rep., 745). Roberts *v.* Parrish (22 Pac. Rep., 136). Coffin *v.* Hutchinson (30 Pac. Rep., 424). Shaffer *v.* Stine (45 Pac. Rep., 301). Fisher *v.* Kelly (38 Pac. Rep., 67). First Nat. Bank *v.* Fire Assn. (50 Pac. Rep., 568). Nickum *v.* Gaston (35 Pac. Rep., 31). State *v.* Magone (51 Pac. Rep., 453). Scott *v.* Astoria R. Co. (72 Pac. Rep., 594).

*Exceptions generally*: Kearney *v.* Snodgrass (7 Pac. Rep., 309). Murray *v.* Murray (6 Or. Rep., 17). Langford *v.* Jones (22 Pac. Rep., 1064.) Salmon *v.* Cress (29 Pac. Rep., 439). Jenson *v.* Foss (33 Pac. Rep., 537). McAllister *v.* Long (54 Pac. Rep., 194). Nickum *v.* Gaston (35 Pac. Rep., 31). State *v.* Clemens (14 Pac. Rep., 410). Beekman *v.* Hamlin (31 Pac. Rep., 707). State *v.* Foot You (32 Pac. Rep., 1031). First Nat. Bank *v.* Or. Paper Co. (71 Pac. Rep., 144, 971). Williamson *v.* N. P. Lbr. Co. (73 Pac. Rep., 7). McClung *v.* McPherson (81 Pac. Rep., 1142). Annans *v.* Sewell (84 Pac. Rep., 395). State *v.* Megordan (88 Pac. Rep., 306). Louie Chung *v.* Stevenson (89 Pac. Rep., 805).

*Amending bill*: State *v.* Estees (52 Pac. Rep., 571). Bloch *v.* Sammons (55 Pac. Rep., 438). State *v.* Jennings (89 Pac. Rep., 421).

*Signing and allowing*: Singer Mfg. Co. *v.* Graham (8 Or. Rep., 17). Kimery *v.* Taylor (45 Pac. Rep., 771). Umatilla Irrig. Co. *v.* Barnhart (30 Pac. Rep., 37). Cleveland Oil Co. *v.* Norwich Ins. Soc. (55 Pac. Rep., 435). Holcomb *v.* Teal (4 Or. Rep., 352). Ah Lep *v.* Gong Choy (11 Pac. Rep., 72). Mogan *v.* Thompson (9 Pac. Rep., 564). Che Gong *v.* Stearns (17 Pac. Rep., 871). Henrichsen *v.* Smith (44 Pac. Rep., 496). McIlvaine *v.* Bradshaw (48 Pac. Rep., 424). Haynes *v.* Clifford (72 Pac. Rep., 1). York *v.* Nash (71 Pac. Rep., 59). Dalton *v.* Gunnison (165 Fed. Rep., 873).

Exceptions, how stated and settled.

SEC. 1053. The point of the exception shall be particularly stated, and may be delivered, in writing, to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth.

Carter Code, sec. 221; Charlton Code, sec. 221.
Chase *v.* Alaska F. & L. Co. (2 Alaska Rep., 85.)

No particular form required.

SEC. 1054. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more.

Carter Code, sec. 222; Charlton Code, sec. 222.

Chase *v.* Alaska F. &. L. Co. (2 Alaska Rep., 85). Goodale Lbr. Co. *v.* Shaw (69 Pac. Rep., 546). Oldland v. Oreg. C. & N. Co. (102 Pac. Rep., 596). Bigelow *v.* Columbia G. M. Co. (103 Pac. Rep., 56).

To be signed by the judge and filed. When exceptions need not be taken or allowed.

SEC. 1055. The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of

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the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

Carter Code, sec. 223; Charlton Code, sec. 223.

Chase *v.* Alaska F. & L. Co. (2 Alaska Rep., 85). Dalton *v.* Gunnison (165 Fed. Rep., 873). Louie Chung *v.* Stevenson (89 Pac. Rep., 805). Thorndyke *v.* Gunnison (174 Fed. Rep., 137). Sunderland *v.* Pearce (1st case) (186 Fed. Rep., 787).

NOTE.—See R. S., sec. 953, and act June 5, 1900 (31 Stat. L., 270).

What deemed excepted to.

SEC. 1056. The verdict of the jury, any order or decision, partially or finally determining the rights of the parties, or any of them, or affecting the pleadings, or granting or refusing a continuance, or granting or refusing a new trial, or admitting or rejecting the evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon ex parte application or in the absence of a party, are deemed excepted to without the exception being taken or stated, or entered in the journal.

Carter Code, sec. 224; Charlton Code, sec. 224.

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# CHAPTER TWENTY-TWO.

## OF NEW TRIAL.


Sec.
1057. Definition of new trial.
1058. New trial, for what causes granted.
1059. Motion for, when filed and determined.
1060. Upon trial by the court and decision in vacation.
1061. Motion must state grounds thereof; when supported by affidavit.
1062. When counter affidavits allowed.


June 6, 1900.

31 Stat. L., 366–367.
R. S., 2d Supp., 1240.

Definition of new trial.

SEC. 1057. A new trial is a reexamination of an issue of fact in the same court after a trial and decision or verdict by a court or jury.

Carter Code, sec. 225; Charlton Code, sec. 225.

State *v.* Eddy (82 Pac. Rep., 707). Scott *v.* Ford (97 Pac. Rep., 99).

New trial, for what causes granted.

SEC. 1058. The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

Second. Misconduct of the jury or prevailing party;

Third. Accident or surprise which ordinary prudence could not have guarded against;

Fourth. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

Fifth. Excessive damages, appearing to have been given under the influence of passion or prejudice;

Sixth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

Seventh. Error in law occurring at the trial and excepted to by the party making the application.

Carter Code, sec. 226; Charlton Code, sec. 226.

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Fuller *v.* Harris (29 Fed. Rep., 814; 1 Alaska Rep., 795). McMorry *v.* Ryan (1 Alaska Rep., 516). Ranks *v.* Wilson (1 Alaska Rep., 241). Moore *v.* Steelsmith (1 Alaska Rep., 121). Carstens Bros. *v.* Frye-Bruhn Co. (1 Alaska Rep., 140). Russell *v.* Dufresne (1 Alaska Rep., 575). Allen *v.* U. S. (115 Fed. Rep., 3; 52 C. C. A., 597; 1 Alaska Rep., 725). Maloney *v.* Adsit (175 U. S. Rep., 281; 1 Aalska Rep., 743). Black *v.* Teeter (1 Alaska Rep., 561). Runner *v.* Woitke (2 Alaska Rep., 470). Williams *v.* Alaska Com. Co. (2 Alaska Rep., 47). Barnett *v.* Freeman (2 Alaska Rep., 288). Chase *v.* Alaska F. & L. Co. (2 Alaska Rep., 82). Marks *v.* Shoup (2 Alaska Rep., 66). Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 722). Reams *v.* McAlpine (2 Alaska Rep., 165). Johanson *v.* Sondheim (2 Alaska Rep., 556). Woods *v.* Beaton (2 Alaska Rep., 1). Alaska Com. Co. *v.* Dinkelspiel (126 Fed. Rep., 164; 61 C. C. A., 108; 2 Alaska Rep., 723). U. S. *v.* Owens (2 Alaska Rep., 480). Dufresne *v.* Nor. Lt. Co. (2 Alaska Rep., 592). Charlton *v.* Kelly (156 Fed. Rep., 433; 84 C. C. A., 295).

Linge's Admin. *v.* Alaska Treadwell Co. (3 Alaska Rep., 11). In this case it is held, unless the grounds for a new trial are plainly specified in the motion for a new trial, the court will not consider whether or not the evidence was insufficient to support the verdict.

*Generally*: Mitchell *v.* Downing (32 Pac. Rep., 394). Lieb *v.* Nicolai (48 Pac. Rep., 172). Adcock *v.* O. R. & N. Co. (77 Pac. Rep., 78). Pac. Coast Bis. Co. *v.* Dugger (70 Pac. Rep., 523). State *v.* Rea (81 Pac. Rep., 822). State *v.* Eddy (82 Pac. Rep., 707). State *v.* Richardson (85 Pac. Rep., 225). Scott *v.* Ford (97 Pac. Rep., 99).

*Waiver of motion*: Fisk *v.* Henarie (13 Pac. Rep., 760). State *v.* Magers (58 Pac. Rep., 892).

*Irregularities*: State *v.* Abrams (8 Pac. Rep., 327). Hemenway *v.* Frances (26 Pac. Rep., 301). State *v.* Lucas (33 Pac. Rep., 538). State *v.* Clemens (14 Pac. Rep., 410).

*Misconduct of jury*: Osmun *v.* Winters (46 Pac. Rep., 780). Tucker *v.* Salem Flour Mill Co. (7 Pac. Rep., 53). State *v.* Magers (58 Pac. Rep., 892).

*Surprise*: U. S. *v.* Smith (1 Saw. Rep., 303). Mayes *v.* Stephens (64 Pac. Rep., 319). State *v.* Gardner (54 Pac. Rep., 809). Horn *v.* United Sec. Co. (81 Pac. Rep., 1009).

*Newly discovered evidence*: U. S. *v.* Smith (1 Saw. Rep., 291). Lauder *v.* Miles (3 Or. Rep., 40). State *v.* Magers (58 Pac. Rep., 892). Cutter *v.* Str. *Columbia* (1 Or. Rep., 101). State *v.* Hill (65 Pac. Rep., 518). Territory *v.* Latshaw (1 Or. Rep., 146). State *v.* Gardner (54 Pac. Rep., 809). Nessly *v.* Ladd (48 Pac. Rep., 420). Belle *v.* Brown (61 Pac. Rep., 1024). State *v.* Mins (61 Pac. Rep., 888.

*Excess of damages*: Nelson *v.* O. R. & N. Co. (9 Pac. Rep., 321). McQuade *v.* Port. & Van. R. Co. (25 Pac. Rep., 26). Kumli *v.* S. P. Co. (28 Pac. Rep., 637). Coos Bay Nav. Co. *v.* Endicott (57 Pac. Rep., 61). Larson *v.* O. R. & N. Co. (23 Pac. Rep., 974). Sorenson *v.* Or. Pr. Co. (82 Pac. Rep., 10).

*Insufficiency of evidence*: Or. Cascade R. Co. *v.* Or. St. Nav. Co. (3 Or. Rep., 178). Serles *v.* Serles (57 Pac. Rep., 634). Jacobs *v.* Oran (48 Pac. Rep., 431). Merchants, Nat. Bank *v.* Pope (26 Pac. Rep., 622). Bowen *v.* State (1 Or. Rep., 271). State *v.* Fitzhugh (2 Or. Rep., 27). State *v.* Wilson (6 Or. Rep., 428). State *v.* McDonald (8 Or. Rep., 113). State *v.* Drake (4 Pac. Rep., 1204). State *v.* Becker (7 Pac. Rep., 329). State *v.* McKay (6 Pac. Rep., 624). State *v.* Roberts (13 Pac. Rep., 896). State *v.* Clemens (14 Pac. Rep., 410). State *v.* Foot You (32 Pac. Rep., 1091). State *v.* Gardner (54 Pac. Rep., 809). Multnomah Co. *v.* Willamette Towing Co. (89 Pac. Rep., 389).

*Evidence conflicting*: Ruckman *v.* Ormond (70 Pac. Rep., 707).

*Mistake, passion, or prejudice*: Hough *v.* Grants Pass Pr. Co. (69 Pac. Rep., 655). Adcock *v.* O. R. & N. Co. (77 Pac. Rep., 78).

*Death of trial judge*: Henrichsen *v.* Smith (44 Pac. Rep., 496). Alexander *v.* Sing (50 Pac. Rep., 915).

NOTE.—As to errors of law excepted to, see citation under sec. 1052, chap. 21, ante.

For additional cases see citations under sec. 2277, chap. 17, of the Code of Criminal Procedure.

Motion for, when filed and determined.

SEC. 1059. A motion for a new trial, with the affidavits, if any, in support thereof, shall, except as hereinafter provided, be filed within three days after giving the verdict or other decision sought to be set aside; but the court may, upon satisfactory showing, extend the time for filing such affidavits. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within three days after the filing of the motion. A motion shall be heard and determined during the term unless the court continue the same for advisement or want of time to hear it.

Carter Code, sec. 227; Charlton Code, sec. 227.

Arragoni *v.* Johnson (6 Or. Rep., 169). Jennings *v.* Frazer (80 Pac. Rep., 1011).

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Upon trial by the court and decision in vacation.

SEC. 1060. Upon a trial by the court, when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision, except as hereinbefore provided.

Carter Code, sec. 228; Charlton Code, sec. 228.

In Cascarden *v.* Dunbar (3 Alaska Rep., 675) the court held that the requirement of filing a motion for new trial within twenty days of filing of a decision in vacation, except in certain cases, applies to equity cases as well as actions of law.

Motion must state grounds thereof; when supported by affidavit.

SEC. 1061. In all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subdivisions one, two, three, or four of section one thousand and fifty-eight, it shall be upon affidavits setting forth the facts upon which such motion is based, unless they appear of record in the cause.

Carter Code, sec. 229; Charlton Code, sec. 229.

Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43, 45, 47, 48, 52). Marks *v.* Shoup (2 Alaska Rep., 67, 69). Chase *v.* Alaska F. & L. Co. (2 Alaska Rep., 86). Barnett *v.* Freeman (2 Alaska Rep., 286, 288). Runner *v.* Woitke (2 Alaska Rep., 470, 471). Linge's Admin. *v.* Alaska Treadwell Co. (3 Alaska Rep., 11). In this case the court held, that unless the grounds for new trial are plainly specified in the motion for new trial, the court will not consider whether or not the evidence was insufficient to support the verdict. Thorndyke *v.* Gunnison (174 Fed. Rep., 137; 98, C. C. A., 171).

NOTE.—See also cases cited under sec. 1058, ante.

When counter affidavits allowed.

SEC. 1062. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced or good reason shown for their nonproduction; and in the consideration of any motion for a new trial reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

Carter Code, sec. 230; Charlton Code, sec. 230.

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# CHAPTER TWENTY-THREE.

## OF GENERAL PROVISIONS.

Sec.
1063. Questions of law and fact, how submitted and when.
1064. Questions of fact to be decided by the jury.
1065. Questions of law and what of fact to be decided by the court.

June 6, 1900.
31 Stat. L., 367.
R. S., 2d Supp., p. 1241.
Questions of law and fact, how submitted and when.

SEC. 1063. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or, at the option of the court, oral, and entered in the judge's minutes.

Carter Code, sec. 231; Charlton Code, sec. 231.

Smith *v.* Shattuck (7 Pac. Rep., 335). Knathla *v.* Or. S. L. R. Co. (27 Pac. Rep., 91). Wild *v.* Or. S. L. R. Co. (27 Pac. Rep., 954). Mullaney *v.* Evans (54 Pac. Rep., 886). McClung *v.* McPherson (81 Pac. Rep., 567).

NOTE.—See sec. 1037, chap. 18, ante.

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Questions of fact to be decided by the jury.

SEC. 1064. All questions of fact other than those mentioned in section one thousand and sixty-five shall be decided by the jury, and all evidence thereon addressed to them.

Carter Code, sec. 232; Charlton Code, sec. 232.

Carlson *v.* Sullivan (146 Fed. Rep., 476). Lindblom *v.* Rocks (146 Fed. Rep., 660). Seittn *v.* Alaska Treadwell G. M. Co. (2 Alaska Rep., 8). Alson *v.* Cook Inlet Coal Field Co. (121 Fed. Rep., 726; 58 C. C. A., 146; 2 Alaska Rep., 700). Gilmore *v.* McBride (156 Fed. Rep., 464).

Questions of law and what of fact to be decided by the court.

SEC. 1065. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is by this code made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

Carter Code, sec. 233; Charlton Code, sec. 233.

*If there is dispute as to fact in issue it is for jury*: Elder *v.* Rourke (41 Pac. Rep., 6). Morrison *v.* Holliday (39 Pac. Rep., 1100). Rosendorf *v.* Baker (8 Or. Rep., 241). Haines *v.* McKinnon (57 Pac. Rep., 903). Barlow *v.* Taylor Min. Co. (44 Pac. Rep., 492). Nickum *v.* Gaston (42 Pac. Rep., 130).

*Where no dispute as to facts but different deductions may reasonably be drawn from them, question for jury*: Hedan *v.* Suburban R. Co. (37 Pac. Rep., 540). Shobert *v.* May (66 Pac. Rep., 466). Richmond *v.* McNeil (49 Pac. Rep., 879). Wallace *v.* Suburban R. Co. (37 Pac. Rep., 477). Cassida *v.* O. R. & N. Co. (13 Pac. Rep., 438). Moakler *v.* Willamette R. Co. (22 Pac. Rep., 948). Perham *v.* Portland Elec. Co. (54 Pac. Rep., 14). Boyd *v.* Port. El. Co. (62 Pac. Rep., 378). Walsh *v.* O. R. & N. Co. (10 Or. Rep., 250). Connell *v.* McLaughlin (42 Pac. Rep., 218; 58 Pac. Rep., 888). Penoyer *v.* Willis (36 Pac. Rep., 568). Hartvig *v.* North Pass Land Co. (25 Pac. Rep., 358).

*When but one deduction can be made from evidence and no conflict in it, question one of law for court and may direct verdict, otherwise must be submitted to jury*: Owens *v.* Snell (44 Pac. Rep., 827). Willis *v.* Holmes (42 Pac. Rep., 989). O. R. & N. Co. *v.* Hertzberg (37 Pac. Rep., 1019). Coffin *v.* Hutchinson (30 Pac. Rep., 424). De Lashmutt *v.* Sellwood (10 Or. Rep., 327).

*Jury should determine intent*: Altschul *v.* O'Neal (58 Pac. Rep., 95).

*As to reasonableness of attorney fee where denied, for jury*: First Nat. Bank *v.* Mack (57 Pac. Rep., 326). Cox *v.* Alexander (46 Pac. Rep., 794).

*Court can not render special verdict upon one of issues while jury determines the others*: Cox *v.* Alexander (46 Pac. Rep., 794). Flore *v.* Ladd (46 Pac. Rep., 144).

*Existence of agency question of fact; scope, one of law*: Longcreek B. Assn. *v.* State Ins. Co. (46 Pac. Rep., 366). Simonds *v.* Wrightman (58 Pac. Rep., 1100).

*As to whether witness was accomplice*: State *v.* Carr (42 Pac. Rep., 215).

*In action for malicious prosecution*: Gee *v.* Culver (6 Pac. Rep., 775; 11 Pac. Rep., 302). Hess *v.* Or. Baking Co. (49 Pac. Rep., 803). Stamper *v.* Raymond (62 Pac. Rep., 20).

*Where court asked to declare a fact established, evidence must have removed all doubt, else for jury*: Koontz *v.* O. R. & N. Co. (23 Pac. Rep., 820).

*Right of jury to determine effects of evidence, except in cases where effect declared by law*: Patterson *v.* Hayden (21 Pac. Rep., 129). Hartvig *v.* N. P. L. Co. (25 Pac. Rep., 358).

*For jury to compare and weigh evidence*: Walsh *v.* O. R. & N. Co. (10 Or. Rep., 250).

*Verdict can not be set aside because it might have reached different conclusion from testimony*: Sperry *v.* Wesco (38 Pac. Rep., 623).

*Court's duty to declare to jury any matter which comes within its specific knowledge*: State *v.* Magers (57 Pac. Rep., 197).

*Whether fact established by evidence of witness, question for jury*: State *v.* Leasia (78 Pac. Rep., 328).

*Where there is any evidence tending to establish a material allegation, court should submit the question to jury*: North Pac. Lbr. Co. *v.* Spore (75 Pac. Rep., 890).

*As to question whether general manager had implied power to execute note, for jury*: Bains *v.* Coos Bay R. & E. R. & N. Co. (77 Pac. Rep., 400).

*Certain questions for jury*: Oliver *v.* Or. Sugar Co. (76 Pac. Rep., 1086). Pac. Export Lbr. Co. *v.* Nor. Pac. Lbr. Co. (80 Pac. Rep., 105). Normile *v.* O. R. & N. Co. (69 Pac. Rep., 928). Anderson *v.* Oregon R. Co. (77 Pac. Rep., 119). Dubiver *v.* City & Subur. R. Co. (74 Pac. Rep., 915; 75 Pac. Rep., 693). Coltra *v.* Penland (69 Pac. Rep., 925). Altshul *v.* Casey (76 Pac. Rep., 1083). Huber *v.* Miller (68 Pac. Rep., 400). Neppach *v.* Or. & C.

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R. Co. (80 Pac. Rep., 482). Boyd *v.* Port. El. Co. (66 Pac. Rep., 576). Chaperon *v.* Port. G. E. Co. (67 Pac. Rep., 928). Boyd *v.* Port. G. E. Co. (68 Pac. Rep., 810). Ringue *v.* Or. Coal & Nav. Co. (75 Pac. Rep., 703). Wagner *v.* City of Portland (67 Pac. Rep., 300). Geldard *v.* Marshall (73 Pac. Rep., 330; 83 Pac. Rep., 867). Viohl *v.* N. P. Lbr. Co. (80 Pac. Rep., 112). Hecker *v.* Or. R. Co. (66 Pac. Rep., 270). Schleiger *v.* No. Terminal Co. (72 Pac. Rep., 324). Manary *v.* Runyon (73 Pac. Rep., 1028). Williamson *v.* N. L. Lbr. Co. (70 Pac. Rep., 387). Busch *v.* Robinson (81 Pac. Rep., 237). Mundhenke *v.* Or. City Mfg. Co. (81 Pac. Rep., 977). State *v.* Ryan (82 Pac. Rep., 703). Price *v.* Or. R. Co. (83 Pac. Rep., 843). State *v.* Smith (83 Pac. Rep., 865). Kabat *v.* Moore (85 Pac. Rep., 506). State *v.* Mizes (85 Pac. Rep., 611). Baker Co. *v.* Huntington (87 Pac. Rep., 1036). Wilmot *v.* Or. R. Co. (87 Pac. Rep., 528). Wm. Hanly Co. *v.* Combs (87 Pac. Rep., 143). State *v.* Megorden (88 Pac. Rep., 306). High *v.* S. P. Co. (88 Pac. Rep., 961). Wollenberg *v.* Sykes (89 Pac. Rep., 148).

*Whether speed of street car at much used crossing is reasonable is for the jury*: Wolf *v.* City R. Co. (91 Pac. Rep., 461).

*Whether dangers of employment were so open and obvious that servant assumed risk is for jury*: Westman *v.* Wind River Lbr. Co. (91 Pac. Rep., 478).

*Whether decedent killed at a railway crossing was negligent at the time, for jury*: Kunz *v.* Or. R. Co. (93 Pac. Rep., 141).

*Where duty to exercise care and extent of its performance are to be ascertained as facts jury alone can determine what is negligence and whether it has been proven*: Jackson *v.* Sumpter Valley R. Co. (93 Pac. Rep., 357).

*Proximate cost for personal injury held question for jury*: Trickey *v.* Clark (93 Pac. Rep., 457).

*Whether a servant, a minor, was negligent in putting his hand under certain knives of a machine while in motion, for jury*: Magone *v.* Portland Mfg. Co. (93 Pac. Rep., 450).

*Question as to good faith of indorsee on check in taking same under circumstances which also tend to show lack of good faith, for jury*: Matlock *v.* Schuerman (93 Pac. Rep., 825).

*In action for injury at railroad crossing, question whether or not notice of approach of train by sounding whistle was reasonable, for jury*: Kunz *v.* O. R. & N. Co. (94 Pac. Rep., 504).

*Whether brakeman, injured while uncoupling cars, was guilty of contributory negligence, for jury*: Rush *v.* Or. Pwr. Co. (95 Pac. Rep., 193).

*Whether deceased had such knowledge of facts and appreciation of danger involved in excavating tunnel of sewer as would constitute assumption of risk thereof, for jury*: Millen *v.* Pac. Bridge Co. (95 Pac. Rep., 197).

*Certain questions for court*: Bredd *v.* Warnick (75 Pac. Rep., 1061). Anderson *v.* Adams (74 Pac. Rep., 215). Neppach *v.* Or. C. R. Co. (80 Pac. Rep., 482). State *v.* Ryan (82 Pac. Rep., 703). State *v.* Smith (83 Pac. Rep., 865). State *v.* Conklin (84 Pac. Rep., 482). Wilmot *v.* Or. R. Co. (87 Pac. Rep., 528). McGregor *v.* Or. R. Co. (93 Pac. Rep., 465). Rumble *v.* Cummings (95 Pac. Rep., 111).

NOTE.—As to instructions of court usurping province of jury, see note to sec. 1023, chap. 17, ante.

# CHAPTER TWENTY-FOUR.

## OF JUDGMENT IN GENERAL.

Sec.
1066. Definition of judgment.
1067. Judgment may be given for or against any of the parties.
1068. When judgment may be given against one or more defendants and action remain pending as to others.

June 6, 1900.
31 Stat. L., 367.
R. S., 2d Supp., p. 1241.

SEC. 1066. A judgment is the final determination of the rights of the parties in the action. Definition of judgment.

Carter Code, sec. 234; Charlton Code, sec. 234.

U. S. *v.* Richards & Jourden (1 Alaska Rep., 613). Alaska Com. Co. *v.* Dabney (144 Fed. Rep., 144). Madden *v.* McKenzie (144 Fed. Rep., 64). Nelson *v.* Meehan (155 Fed. Rep., 1; 83 C. C. A., 597). Thornburg *v.* Guttridge (80 Pac. Rep., 100). Whelan *v.* McMahon (82 Pac. Rep., 19). Huffman *v.* Huffman (86 Pac. Rep., 593).

SEC. 1067. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defend- Judgment may be given for or against any of the parties.

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ants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Carter Code, sec. 235; Charlton Code, sec. 235.

Miller *v.* Blackett (47 Fed. Rep., 547; 1 Alaska Rep., 827). Hamm *v.* Bashe (30 Pac. Rep., 501). Coleman *v.* Elmore (31 Fed. Rep., 393). Ruble *v.* Coyotte G. & S. M. Co. (10 Or. Rep., 41). Sears *v.* McGrew (10 Or. Rep., 48). Ah Lep *v.* Gung Choy (11 Pac. Rep., 72). Tillamook Dairy Assn. *v.* Schermerhorn (51 Pac. Rep., 438). Fisk *v.* Henarie (13 Pac. Rep., 193). Thomas *v.* Barnes (56 Pac. Rep., 73). Hayden *v.* Pierce (52 Pac. Rep., 1049). Cox *v.* Alexander (46 Pac. Rep., 794). Sabin *v.* Mitchell (39 Pac. Rep., 635). Coughanour *v.* Hutchinson (69 Pac. Rep., 68). Parkersville Drainage Dist. *v.* Wattier (86 Pac. Rep., 775). Holmes *v.* Wolfara (81 Pac. Rep., 819). Krebs Hop Co. *v.* Taylor (98 Pac. Rep., 494). Ferrari *v.* Beaver Hill Coal Co. (102 Pac. Rep., 1016).

When judgment may be given against one or more defendants and action remain pending as to others.

SEC. 1068. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

Carter Code, sec. 236; Charlton Code, sec. 236.

Krebs Hop Co. *v.* Taylor (98 Pac. Rep., 494).

NOTE.—See citations to last preceding section.

## CHAPTER TWENTY-FIVE.

### OF JUDGMENT OF NONSUIT.

Sec.
1069. When judgment of nonsuit may be given.
1070. What is a cause not sufficient to be submitted to the jury.
1071. Effect of judgment of nonsuit.

June 6, 1900.

31 Stat. L., 368. R. S., 2d Supp., pp. 1241–1242.

When judgment of nonsuit may be given.

SEC. 1069. A judgment of nonsuit may be given against the plaintiff as provided in this chapter—

First. On motion of the plaintiff, at any time before trial, unless a counterclaim has been pleaded as a defense;

Second. On motion of either party, upon the written consent of the other filed with the clerk;

Third. On motion of the defendant, when the action is called for trial and the plaintiff fails to appear, or when, after the trial has begun and before the final submission of the cause, the plaintiff abandons it, or when, upon the trial, the plaintiff fails to prove a cause sufficient to be submitted to the jury.

Carter Code, sec. 237; Charlton Code, sec. 237.

Banks *v.* Wilson (1 Alaska Rep., 242). Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A. 155; 2 Alaska Rep., 645). Fulkerson *v.* Chisna Min. Co. (122 Fed. Rep., 782; 58 C. C. A., 582; 2 Alaska Rep., 751). N. W. Steamship Co. *v.* Griggs (146 Fed. Rep., 472).

NOTE.—*Subdivisions 1, 2, 3.*

Debney *v.* Iles (3 Alaska Rep., 446).

*Nonsuit*: Is in nature of demurrer to evidence: Brown *v.* Oregon Lbr. Co. (33 Pac. Rep., 557). Perkins *v.* McCollough (59 Pac. Rep., 182). Barr *v.* Rader (54 Pac. Rep., 210).

*Motion for verdict governed by same rule*: First Nat. Bank *v.* Fire Assn. (50 Pac. Rep., 568).

*Court is judge of competency of evidence, jury of its sufficiency*: Brown *v.* Or. Lbr. Co. (33 Pac. Rep., 557). Herbert *v.* Dufur (32 Pac. Rep., 302). Grant *v.* Baker (7 Pac. Rep., 318). Southwell *v.* Beezley (5 Or. Rep., 458). Curry *v.* Butcher (61 Pac. Rep., 631). Anderson *v.* Nor. Pac. Lbr. Co. (28 Pac. Rep., 5). Perkins *v.* McCollough (59 Pac. Rep., 182). Feldman *v.* McGuire (55 Pac. Rep., 872). Barr *v.* Rader (54 Pac. Rep., 210). Sovern *v.* Yoran (15 Pac. Rep., 393). Ferrara *v.* Parke (23 Pac. Rep., 883). Davenport *v.* Dose (67 Pac. Rep., 112). In re Morgan's Estate (77 Pac. Rep., 608; 78 Pac. Rep., 1029). N. P. Lbr. Co. *v.* Sport (75 Pac. Rep., 890). Mulkey *v.* Day (89 Pac. Rep., 957). Carroll *v.* Grande Ronde Elec. Co. (90 Pac. Rep., 903). N. P. R. Co. *v.* Spencer (108 Pac. Rep., 180).

NOTE.—See sec. 1158, chap. 34 of this title as to nonsuit in action on official bonds, etc.

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*For actions of equitable nature* see secs. 1209, 1210, chap. 39, of this title.

*On motion of plaintiff*: U. S. *v.* Humason (8 Fed. Rep., 73). Hume *v.* Woodruff (38 Pac. Rep., 191). Ferguson *v.* Ingle (62 Pac. Rep., 760). Curry *v.* S. P. Co. (31 Pac. Rep., 964). Moffett *v.* Thompson (52 Pac. Rep., 565). Bailey *v.* Wilson (55 Pac. Rep., 973). Dove *v.* Hayden (5 Or. Rep., 500). Mitchell *v.* Downing (32 Pac. Rep., 394).

*Generally*: Buchanan *v.* Beck (16 Pac. Rep., 422). Jacobson *v.* Siddal (7 Pac. Rep., 108). Ferrera *v.* Parke (23 Pac. Rep., 883). Peabody *v.* O. R. & N. Co. (26 Pac. Rep., 1053). Thomas *v.* Bowen (45 Pac. Rep., 768). Eastman *v.* Monastes (51 Pac. Rep., 1095). Rader *v.* McIlvaine (27 Pac. Rep., 97). Tyler *v.* Tulation Academy (13 Pac. Rep., 329). Hedin *v.* Surbur. R. Co. (37 Pac. Rep., 540). Wallace *v.* Surbur. R. Co. (37 Pac Rep., 477). Ryberg *v.* Portland Cable R. Co. (29 Pac. Rep., 614). Anderson *v.* N. P. L. Co. (28 Pac. Rep., 5). Richmond *v.* McNeal (29 Pac. Rep., 879). Durbin *v.* O. R. & N. Co. (17 Pac. Rep., 5). Coggswell *v.* Or. Calif. R. Co. (6 Or. Rep., 423). Brown *v.* Or. Lbr. Co. (33 Pac. Rep., 557). McPherson *v.* Pacific Bridge Co. (26 Pac. Rep., 560). Coughtry *v.* Willamette St. R. Co. (27 Pac. Rep., 1031). Langford *v.* Jones (22 Pac. Rep., 1064). Grant *v.* Baker (7 Pac. Rep., 318). Jones *v.* Peterson (74 Pac. Rep., 661). Chaperone *v.* Port G. E. Co. (67 Pac. Rep., 928). Payton *v.* Burns (69 Pac. Rep., 134). Union L. & P. Co. *v.* Lichty (71 Pac. Rep., 1044). Jackson *v.* Stearns (84 Pac. Rep., 798). Jackson *v.* Baker (85 Pac. Rep., 512). Pac. Mill Co. *v.* Inman Poulsen & Co. (90 Pac. Rep., 1099). Brown *v.* Lewis (92 Pac. Rep., 1058). Fredenthal *v.* Brown & McCabe (95 Pac. Rep., 1114). Sutherlin *v.* Bloomer (93 Pac. Rep., 136). Jackson *v.* Sumpter Valley Ro. (93 Pac. Rep., 356). Meier *v.* N. P. Co. (93 Pac. Rep., 690).

*On appeal*: Columbia Nav. Co. *v.* Van C. Trans. Co. (52 Pac. Rep., 513). Fisher *v.* Kelly (38 Pac. Rep., 67).

*Where defendant, after motion overruled, supplies defects in plaintiff's evidence, ruling for motion will not be reviewed*: Bennett *v.* N. P. Ex. Co. (6 Pac. Rep., 160).

*Motion not waived by defendant simply introducing evidence thereafter*: Carney *v.* Dunlway (57 Pac. Rep., 192; 58 Pac. Rep., 105). Ferguson *v.* Ingle (62 Pac. Rep., 760). Hedin *v.* Surbur. R. Co. (37 Pac. Rep., 540). Johnson *v.* Or. S. L. R. Co. (31 Pac. 283). Atterbury *v.* Port & W. V. R. Co. (22 Pac. Rep., 527). Woods *v.* Courtney (17 Pac. Rep., 745). Roberts *v.* Parrish (22 Pac. Rep., 136). Coffin *v.* Hutchinson (30 Pac. Rep., 424). Shaffer *v.* Stine (45 Pac. Rep., 301). First Nat. Bank *v.* Fire Assn. (50 Pac. Rep., 568). Herring, Hall, Marvin *v.* Smith (72 Pac. Rep., 704; 73 Pac. Rep., 340). Adkins *v.* City of Monmouth (68 Pac. Rep., 737).

What is a cause not sufficient to be submitted to the jury.

SEC. 1070. A cause not sufficient to be submitted to the jury is one where it appears that if the jury were to find a verdict for the plaintiff upon any or all of the issues to be tried the court ought, if required, to set it aside for want of evidence to support it.

Carter Code, sec. 238; Charlton Code, sec. 238.

Banks *v.* Wilson (1 Alaska Rep., 242). Beginish *v.* Gates (2 Alaska Rep., 511). Cascaden *v.* Dunbar (3 Alaska Rep., 671). Cullison *v.* Downing (71 Pac. Rep., 70). Payton *v.* Burns (69 Pac. Rep., 134). Trickey *v.* Clark (93 Pac. Rep., 456). J. P. Jorgenson Co. *v.* Rapp (157 Fed. Rep., 732; 85 C. C. A., 364).

Effect of judgment of nonsuit.

SEC. 1071. When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

Carter Code, sec. 239; Charlton Code, sec. 239.

Banks *v.* Wilson (1 Alaska Rep., 244). Carroll *v.* La Grande Elec. Co. (90 Pac. Rep., 903). Burns *v.* Kennedy (90 Pac. Rep., 1102).

## CHAPTER TWENTY-SIX.

### OF JUDGMENT ON FAILURE TO ANSWER.

Sec.
1072. When judgment may be given for want of answer.

June 6, 1900.
31 Stat. L., 368-369.
R. S., 2d Supp., pp. 1242-1243.

SEC. 1072. Judgment may be had upon failure to answer, as follows:

When the time for answering the complaint has expired and it appears that the defendant, or one or more of several defendants, in



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When judgment may be given for want of answer.

the cases mentioned in section eight hundred and eighty-three, has been duly served with the summons and has failed to answer the complaint, the plaintiff shall be entitled to have judgment against such defendant or defendants—

First. In an action arising upon contract for the recovery of money or damages only; if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the clerk, upon the application of the plaintiff made in writing and filed with the clerk, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs of the defendant, or against one or more of several defendants, in cases provided for in section eight hundred and eighty-three.

Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons or such further time as may have been granted by the court or judge thereof, the clerk shall, upon the written motion of the plaintiff being filed, enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint; and the court shall, upon such demand, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it be necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof be taken. The court may hear the proof itself, or make an order of reference, or order that a jury be called to inquire thereof. The defendant shall not be precluded, by reason of his default, from offering proof in mitigation of damages;

Third. When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto;

Fourth. When in any action the service of the summons appears to have been made by publication, the court may, in its discretion, order the entry of judgment to be delayed until the plaintiff file with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualifications of bail, and justify before the clerk as provided in section nine hundred and forty-one.

Carter Code, sec. 240; Charlton Code, sec. 240.

*Generally*: Gaines *v.* Syrus (31 Pac. Rep., 833). Wheeler *v.* Berhart (56 Pac. Rep., 644). Graydon *v.* Thomas (3 Or. Rep., 250). Crawford *v.* Beard (8 Pac. Rep., 537). Talbot *v.* Garretson (49 Pac. Rep., 978). Neill *v.* Tolman (7 Pac. Rep., 103). Philbrick *v.* O'Connor (13 Pac. Rep., 612). White *v.* Johnson (40 Pac. Rep., 511). Smith *v.* Ellendale Mill Co. (4 Or. Rep., 71). Trullenger *v.* Todd (5 Or. Rep., 37). Foshler *v.* Narver (34 Pac. Rep., 21). Willamette Falls Co. *v.* Clark (1 Or. Rep., 113). Hunsaker *v.* Coffin (2 Or. Rep., 110). Northout *v.* Lemery (8 Or. Rep., 322). Willamette Falls Co. *v.* Smith (1 Or. Rep., 181). Tolmie *v.* Otchin (1 Or. Rep., 95). White *v.* N. W. Stage Co. (5 Or. Rep., 102). Deane *v.* Willamette Bridge Co. (29 Pac. Rep., 440). Veulleumier *v.* Or. W. P. & R. Co. (105 Pac. Rep., 706).

NOTE.—This section is made applicable to suits in equity. See Ghores *v.* Illinois Mining Co. (67 Pac. Rep., 666).

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*Appeal*: Smith *v.* Ellendale Mill Co. (4 Or. Rep., 71). Trullinger *v.* Todd (5 Or. Rep., 38). Askren *v.* Squire (45 Pac. Rep., 779). Bailey *v.* Malheur Irrig. Co. (57 Pac. Rep., 910). Weaver *v.* Southern Or. Co. (48 Pac. Rep., 171). Willitts *v.* Walter (52 Pac. Rep., 24). Fassman *v.* Baumgardner (3 Or. Rep., 469). Kearns *v.* Follinsby (16 Pac. Rep., 478). Long *v.* Sharp (5 Or. Rep., 439). Whipple *v.* S. P. Co. (55 Pac. Rep., 975). State *v.* Leasia (78 Pac. Rep., 328). Bowman *v.* Holman (86 Pac. Rep., 792).

NOTE.—For entry of judgment for want of answer, etc., see sec. 1086, chap. 29, of this title.

As to when defendant may be allowed to defend after judgment on publication, see sec. 881, chap. 4, ante.

As to relieving from judgment in case of surprise, etc., see sec. 925, chap. 11, ante.

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# CHAPTER TWENTY-SEVEN.

## OF JUDGMENT BY CONFESSION.

Sec.
1073. Judgment by confession where action pending.
1074. Who to make confession.
1075. When judgment may be given against several defendants on the confession of one.
1076. Confession to be in writing; how judgment given.
1077. Judgment by confession without action.
1078. How confession made in such cases.
1079. Same subject. Execution when judgment for installments.

June 6, 1900.

31 Stat. L., 369–370.
R. S., 2d Supp., p. 1243.

Judgment by confession where action pending.

SEC. 1073. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Carter Code, sec. 241; Charlton Code, sec. 241.

Harniska *v.* Dolph (133 Fed. Rep., 158; 60 C. C. A., 224; 2 Alaska Rep., 691). Allen *v.* Norton (6 Or. Rep., 344). Miller *v.* Bank of Brit. Col. (2 Or. Rept., 291). Miller *v.* Or. City Mfg. Co. (3 Or. Rep., 24). Stewart *v.* Corbus (13 Pac. Rep., 647). O'Connell *v.* Hansen (44 Pac. Rep., 387). Fassmann *v.* Baumgardner (3 Or. Rep., 469). Stites *v.* McGee (61 Pac. Rep., 1129).

NOTE.—For entry of judgment by confession see sec. 1086, chap. 29, of this title.

Who to make confession.

SEC. 1074. When the action is against a public corporation or a private corporation, the confession shall be made by the person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him. In all other cases the confession shall be made by the defendant in person.

Carter Code, sec. 242; Charlton Code, sec. 242.

Miller *v.* Bank of Brit. Col. (2 Or. Rep., 291). Miller *v.* Or. City Mfg. Co. (3 Or. Rep., 24). English *v.* Savage (5 Or. Rep., 518).

When judgment may be given against several defendants on the confession of one.

SEC. 1075. When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served with the summons or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Carter Code, sec. 243; Charlton Code, sec. 243.

Richardson *v.* Fuller (2 Or. Rep., 179).

Confession to be in writing; how judgment given.

SEC. 1076. The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowl-

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edgments of deeds, but such acknowledgment is not required when the parties or their attorneys shall appear in court when the judgment is given, or before the clerk in vacation by whom the judgment is entered. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

Carter Code, sec. 244; Charlton Code, sec. 244.

Judgment by confession without action.

SEC. 1077. On the confession of any person capable by this code of being made a party defendant to an action, judgment may be given against such person without action, in term time or vacation, in favor of anyone, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

Carter Code, sec. 245; Charlton Code, sec. 245.

How confession made in such cases.

SEC. 1078. The confession shall be made, assented to, and acknowledged, and judgment given in the same manner as a confession in an action pending; besides which, the confession shall be verified by the oath of the party making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the facts out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due.

Carter Code, sec. 246; Charlton Code, sec. 246.

Miller *v.* Bank of Brit. Col. (2 Or. Rep., 291). Miller *v.* Or. City Mfg. Co. (3 Or. Rep., 24). Richardson *v.* Fuller (2 Or. Rep., 179). O'Connell *v.* Hanson (44 Pac. Rep., 387).

Same subject. Execution when judgment for installments.

SEC. 1079. If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments as they become due.

Carter Code, sec. 247; Charlton Code, sec. 247.

Allen *v.* Norton (6 Or. Rep., 345).

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# CHAPTER TWENTY-EIGHT.

## OF SUBMITTING CONTROVERSY WITHOUT ACTION.


Sec.
1080. Controversy may be submitted without action.
1081. Statement of the case and verification thereof.
1082. Statement to be filed with the clerk. Jurisdiction of court.


June 6, 1900.
31 Stat. L., 370. R. S., 2d Supp., 1244.

Controversy may be submitted without action.

SEC. 1080. Parties to a question in controversy which might be the subject of an action in a court of record, with such parties plaintiffs or defendants, may submit the same to the determination of such court without action, as in this chapter provided.

Carter Code, sec. 248; Charlton Code, sec. 248.

Statement of the case and verification thereof.

SEC. 1081. The parties as plaintiff and defendant shall state, in writing, a case containing the facts upon which the controversy depends, and subscribe the same in person or by their attorneys. Such statement shall be verified by the oaths of the parties, or, where there is more than one plaintiff or defendant, by at least one of each, to the effect that the controversy is real, and the proceeding is taken in good

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faith to determine the rights of the parties. Where either party to the controversy is a public corporation, or a private corporation, the statement of the case may be subscribed and verified by any person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him.

Carter Code, sec. 249; Charlton Code, sec. 249.

Statement to be filed with the clerk. Jurisdiction of court.

SEC. 1082. The statement shall be filed with the clerk, and from the date of such filing the court shall have jurisdiction of the controversy as if the same were an action pending after a special verdict found, and shall proceed to hear and determine the same accordingly.

Carter Code, sec. 250; Charlton Code, sec. 250.

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# CHAPTER TWENTY-NINE.

## OF THE MANNER OF GIVING AND ENTERING JUDGMENT.


Sec.
1083. Judgment to be entered in journal; manner of entry.
1084. If counterclaim exceeds plaintiff's demand, judgment for defendant.
1085. Judgment in actions for the recovery of personal property.
1086. What entry to state in judgment for want of answer.
1087. Judgment on demurrer.
1088. When entry of judgment made.
1089. Judgment notwithstanding the verdict.
1090. When entry of judgment made after motion for new trial decided in vacation.
1091. Entry of judgment after the time prescribed.


June 6, 1900.
31 Stat. L., 370–372.
R. S., 2d Supp., 1244–1246.

Judgment to be entered in journal; manner of entry.

SEC. 1083. All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. If entered in vacation, the entry shall be entitled and dated substantially as follows:

UNITED STATES OF AMERICA,
District of Alaska.
Precinct ———.

District court for the district of Alaska. In vacation, after the ——— term, A. D. 19——.
——— the ———, A. D. 19——,
as the fact may be, and such entry shall have the same effect as if entered in term time. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

Carter Code, sec. 251; Charlton Code, sec. 251.

Lewis *v.* First Nat. Bank (78 Pac. Rep., 990). State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978). Summers *v.* Geer (85 Pac. Rep., 513).

NOTE.—As to when judgment may be given in vacation, see sec. 1212, chap. 39, of this title.

As to judgment in case of attached property, see sec. 979, chap. 14, ante.

If counterclaim exceeds plaintiff's demand, judgment for defendant.

SEC. 1084. If a counterclaim established at the trial exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Carter Code, sec. 252; Charlton Code, sec. 252.

Bennett *v.* Forrest (69 Fed. Rep., 421; 1 Alaska Rep., 722).

NOTE.—See sec. 1212, chap. 39, of this title.

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Judgment in actions for the recovery of personal property.

SEC. 1085. In an action to recover the possession of personal property judgment for the plaintiff may be for the possession, or the value thereof in case a delivery can not be had, and damages for the detention thereof. If the property have been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return can not be had, and damages for taking and withholding the same.

Carter Code, sec. 253; Charlton Code, sec. 253.

Capital Lbr. Co. *v.* Hall (10 Or. Rep., 205). McDonald *v.* Evans (3 Or. Rep., 475). Lavie *v.* Crosby (74 Pac. Rep., 220). Feller *v.* Feller (78 Pac. Rep., 394). Leve *v.* Fraser (70 Pac. Rep., 376).

NOTE.—As to recovery of personal property, see chap. 13 of this title. As to verdict in action to recover personal property, see sec. 1036, chap. 18, ante.

What entry to state in judgment for want of answer.

SEC. 1086. When judgment is given for want of answer, the entry shall state substantially that the defendant has been duly served with the summons and has failed to answer the complaint. When judgment is given on confession, with or without action, on the report of referees, or on a controversy, submitted without action, the entry shall state in like manner the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

Carter Code, sec. 254; Charlton Code, sec. 254.

NOTE.—See sec. 1072, chap. 26; sec. 1073, chap. 27; and sec. 1212, chap. 39, of this title.

Judgment on demurrer.

SEC. 1087. When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made be allowed to amend or plead over, judgment shall be given for the plaintiff or defendant, as the case may be, for such amount or relief, or to such effect, as it appears from the pleadings he is entitled to; but if the case is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue be tried or otherwise disposed of.

Carter Code, sec. 255; Charlton Code, sec. 255.

Johnson *v.* Seattle El. Co. (81 Pac. Rep., 705). Stewart *v.* Douglass (82 Pac. Rep., 699).

NOTE.—See sec. 1212, chap. 39, of this title.

When entry of judgment made.

SEC. 1088. When judgment is given in any of the cases mentioned in the two sections last preceding, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Except as in this section hereinafter provided, when a trial by the court has been had judgment shall be entered by the clerk in conformity with the decision within two days from the time the same is filed; or if the trial be by jury, judgment shall be given by the court in conformity therewith and entered by the clerk within two days from the time the verdict has been received; and in either case within the term at which such judgment is given.

First. When the court is in doubt what judgment ought to be given, it may order the question to be reserved for argument or further consideration, and thereupon the entry of judgment shall be delayed until judgment be given;

Second. When, within the time allowed to file a motion for new trial, either party shall file a motion for a particular judgment or for judgment notwithstanding the verdict or decision; or,

Third. When a motion for new trial is filed within the time prescribed, the entry of judgment shall be thereby delayed until the motion is disposed of;

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Fourth. When, upon a trial by the court, its decision is filed in vacation, the entry of judgment shall be delayed until the expiration of the time prescribed to file a motion for a new trial.

Carter Code, sec. 256; Charlton Code, sec. 256.

NOTE.—For second paragraph of this section see Logan *v.* Columbia Canning Co. (2 Alaska Rep., 559).

Saunders *v.* Pike (6 Or. Rep., 314). Fisk *v.* Henarie (13 Pac. Rep., 760). Arragonia *v.* Johnson (6 Or. Rep., 170). Thompkins *v.* Clackamas County (4 Pac. Rep., 1210). Douglas Co. Road Co. *v.* Douglas County (5 Or. Rep., 406). Thornberg *v.* Guttridge (80 Pac. Rep., 100). Lewis *v.* First Nat. Bank (78 Pac. Rep., 990).

Judgment, notwithstanding the verdict.

SEC. 1089. When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, on motion judgment shall be given for the plaintiff or defendant, as the case may be, notwithstanding the verdict or decision.

Carter Code, sec. 257; Charlton Code, sec. 257.

U. S. *v.* Richards & Jourden (1 Alaska Rep., 614). Aiken *v.* Coolidge (6 Pac. Rep., 712). Specht *v.* Allen (6 Pac. Rep., 494). Andros *v.* Childers (13 Pac. Rep., 65). Wheeler *v.* McFerron (62 Pac. Rep., 1015). Friendly *v.* Lee (25 Pac. Rep., 396). Hemmenway *v.* Francis (26 Pac. Rep., 301). Wyatt *v.* Henderson (48 Pac. Rep., 790). Venecia Agricultural Works *v.* Creighton (28 Pac. Rep., 775; 30 Pac. Rep., 676). Hargett *v.* Beardsley (54 Pac. Rep., 204).

When entry of judgment made after motion for new trial decided in vacation.

SEC. 1090. When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the verdict, is decided in vacation, the decision shall be in writing and filed with the clerk. Within the day of such filing judgment shall be entered by the clerk in conformity with the decision.

Carter Code, sec. 258; Charlton Code, sec. 258.

Entry of judgment after the time prescribed.

SEC. 1091. When the clerk is unable or omits to enter judgment within the time prescribed in this chapter, if the judgment has been given in vacation, it may be entered at any time thereafter, of the date which it is actually entered; if it has been given in term time, it may be entered at any time during the term, of the day's proceedings on which it should have been entered, or, on motion of the party entitled, at any subsequent term, of the day on which it is actually entered.

Carter Code, sec. 259; Charlton Code, sec. 259.

NOTE.—See sec. 1212, chap. 39, of this title.

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# CHAPTER THIRTY.

## OF LIEN JUDGMENT AND FINAL RECORD.

Sec.
1092. Judgment to be lien from time of the docketing.
1093. Expiration of lien; when revived.
1094. Conveyance; when void as against lien.
1095. Clerk must make judgment roll.
1096. Final record; in what cases required.

June 6, 1900.

31 Stat. L., 372-373.

R. S., 2d Supp., pp. 1246-1247.

Judgment to be lien from time of the docketing.

SEC. 1092. Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the office of the recorder of any recording dis-

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trict that may have been established in said District in accordance with law. Upon the filing of such transcript the recorder shall docket the same in the judgment docket of his office. From the date of docketing a judgment, as in this chapter provided, or the transcript thereof, such judgment shall be a lien upon all the real property of the defendant within the recording district or districts where the same is docketed, or which he may afterwards acquire therein, during the time an execution may issue thereon.

Carter Code, sec. 260; Charlton Code, sec. 260.

Frye-Bruhn Co. *v.* Myer (121 Fed. Rep., 533; 58 C. C. A., 224; 2 Alaska Rep., 691). Alaska Com. Co. *v.* Debney (2 Alaska Rep., 303). Murray *v.* Strong (2 Alaska Rep., 517).

*Lien of judgment*: In re Boyd (4 Saw. Rep., 262). Stannis *v.* Nicholson (2 Or. Rep., 332). Glaze *v.* Lewis (7 Pac. Rep., 354). Creighton *v.* Leeds (9 Or. Rep., 215). Lovelady *v.* Burgess (52 Pac. Rep., 25). Hutchinson *v.* Gorman (61 Pac. Rep., 431). Dearborn *v.* Patton (4 Or. Rep., 59). Wyatt *v.* Espey (28 Pac. Rep., 71). Barrett *v.* Furnish (26 Pac. Rep., 861). Settlemeier *v.* Newson (10 Or. Rep., 446). Flanders *v.* Aumack (51 Pac. Rep., 447). Willis *v.* Miller (31 Pac. Rep., 827). Dickson *v.* Back (51 Pac. Rep., 727). De Lashmutt *v.* Selwood (10 Or. Rep., 319). Kaston *v.* Storey (80 Pac. Rep., 217). Budd *v.* Gallier (89 Pac. Rep., 638). Mansfield *v.* Hill (108 Pac. Rep., 1007).

*What property affected*: Meier *v.* Kelly (29 Pac. Rep., 265). Dimmick *v.* Rosenfeldt (55 Pac. Rep., 100). Smith *v.* Ingle (2 Or. Rep., 43). Bloomfield *v.* Humason (4 Pac. Rep., 332). In re Estees (3 Fed. Rep., 134). The Holladay Case (28 Fed. Rep., 118). Creighton *v.* Leeds (9 Or. Rep., 215). Stannis *v.* Nicholson (2 Or. Rep., 332). Kaston *v.* Story (80 Pac. Rep., 217). Wood *v.* Fisk (77 Pac. Rep., 128, 738). Oliver *v.* Wright (83 Pac. Rep., 870). Katz *v.* Obenchain (85 Pac. Rep., 617). Budd *v.* Gallier (89 Pac. Rep., 638).

*Priority*: Myer *v.* Kelly (29 Pac. Rep., 265). Creighton *v.* Leeds (9 Or. Rep., 215). Stannis *v.* Nicholson (2 Or. Rep., 332). Lillienthal *v.* Houghtaling Co. (15 Pac. Rep., 630).

NOTE.—This chapter is applicable to judgments in equity. See sec. 1212, chap. 39, of this title.

Willis *v.* Miller (31 Pac. Rep., 827).

NOTE.—As to lien of justice court judgment, see secs. 1813, 1814, chap 96, of this title.

Expiration of lien; when received.

SEC. 1093. Whenever, after the entry of judgment, a period of ten years shall elapse without an execution being issued on such judgment, the lien thereof shall expire. If afterwards leave is given to issue execution thereon, a transcript of the docket of the order allowing the same may be docketed in any other recording district in said District in the same manner as a judgment. From the date of the docketing such order, or a transcript thereof, the lien of the judgment shall begin anew, and continue in all respects as upon the first docketing of the same.

Carter Code, sec. 261; Charlton Code, sec. 261.

Murch *v.* Moore (2 Or. Rep., 189).

NOTE.—As to execution on dormant judgment see sec. 1114, chap. 31, post.

Conveyance; when void as against lien.

SEC. 1094. A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be.

Carter Code, sec. 262; Charlton Code, sec. 262.

Baker *v.* Woodward (6 Pac. Rep., 173). Stannis *v.* Nicholson (2 Or. Rep., 332). U. S. *v.* Griswold (8 Fed. Rep., 572). Riddle *v.* Miller (23 Pac. Rep., 807). Myer *v.* Kelly (29 Pac. Rep., 265). Davison *v.* McKay (29 Pac. Rep., 791). Laurent *v.* Lanning (51 Pac. Rep., 80). Kaston *v.* Storey (80 Pac. Rep., 217).

NOTE.—As to unrecorded conveyance, see sec. 524, chap. 11, Civil Code.

Clerk must make judgment roll.

SEC. 1095. After docketing the judgment, and before the next regular term of court, the clerk shall prepare and file in his office the judgment roll, as provided in this section.

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First. If the complaint has not been answered by any defendant he shall attach together, in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry of judgment.

Second. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

Third. In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall indorse the name of the court, the term at which judgment was given, the names of the parties to the action and the title thereof, for whom judgment was given, and the amount or nature thereof, and the date of its entry and docketing.

Carter Code, sec. 263; Charlton Code, sec. 263.

Neff *v.* Pennoyer (3 Saw. Rep., 274). Jones *v.* Marion County (4 Or. Rep., 46). Osburn *v.* Graves (6 Pac. Rep., 227). Van Bibber *v.* Fields (36 Pac. Rep., 526). Trimmer *v.* Conrad (51 Pac. Rep., 447). Farrell *v.* Ore G. Co. (49 Pac. Rep., 876). Ankeny *v.* Fairview Mill Co. (10 Or. Rep., 395). Tatum *v.* Massie (44 Pac. Rep., 494). Carland *v.* Highberg (2 Or. Rep., 77). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359).

Final record; in what cases required.

SEC. 1096. Instead of the judgment roll prescribed in the section last preceding, there shall be a final record made of the cause, as provided in this section.

First. When in any action it shall appear that the title to real property, or any interest therein, or any easement, franchise, or right in or to the same, is directly determined or affected by the judgment therein, on motion of either party the court shall order that a final record be made of the case and the expense of such record shall be taxed as other disbursements of the action.

Second. In all other actions, on motion of either party, the court shall order that a final record be made of the case at the cost of the party moving for the same.

When a final record is ordered, it shall be made by the clerk within the time prescribed to prepare a judgment roll, by recording the papers and journal entries required in such roll in the order prescribed therefor.

Carter Code, sec. 264; Charlton Code, sec. 264.

Nelson *v.* Meehan (2 Alaska Rep., 489). Dray *v.* Crich (3 Or. Rep., 300). Howell *v.* State (1 Or. Rep., 241).

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# CHAPTER THIRTY-ONE.

## OF THE ENFORCEMENT OF JUDGMENT.


Sec.
1097. When judgment may be enforced by execution.
1098. Different kinds of executions.
1099. By whom issued, what to contain and require.
1100. How endorsed by marshal and when returnable.
1101. When execution issued against the person.
1102. How person arrested on execution imprisoned.
1103. Execution against property may issue after death of judgment debtor, except.
1104. Exemption of homestead from judicial sale.
1105. What property liable to execution and what exempt.
1106. Execution against property, how executed.
1107. Same subject.
1108. When garnishee gives marshal certificate, how marshal to proceed.
1109. When marshal may leave personal property in possession of judgment debtor.


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Sec.
1110. Notice of sale on execution, how given.
1111. Sales, where and how made.
1112. When marshal may adjourn sale.
1113. Bill of sale and delivery by marshal of personal property.
1114. When execution not to issue except by leave of the court and how leave obtained.
1115. Confirmation of sale of real estate, proceedings thereon.
1116. Who liable for purchase money in case of eviction of purchaser.
1117. Contribution among joint judgment debtors.
1118. Sale of real property, when absolute and when subject to redemption.
1119. Who may redeem.
1120. When lien creditor may redeem from purchaser.
1121. When lien creditor may redeem from redemptioner.
1122. When judgment debtor may redeem.
1123. Purchaser or redemptioner, when entitled to conveyance.
1124. Mode of proceeding to redeem.
1125. Court may restrain waste prior to conveyance.
1126. Who entitled to possession from time of sale to conveyance.
1127. Order to examine judgment debtor.
1128. Examination of judgment debtor, proceedings thereon.
1129. Restraining order against judgment debtor.
1130. When judgment debtor may be arrested.
1131. Order to examine garnishee, proceedings thereon.
1132. What officers not liable to answer as garnishee.

June 6, 1900.
31 Stat. L., 373–382.
R. S., 2d Supp., pp. 1247–1256.

When judgment may be enforced by execution.

SEC. 1097. The person in whose favor a judgment is given which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof have a writ of execution issued for its enforcement, as provided in this chapter.

Carter Code, sec. 265; Charlton Code, sec. 265.

Different kinds of executions.

Allen *v.* Norton (6 Or. Rep., 344). | Watson *v.* Moore (66 Pac. Rep., 814).

SEC. 1098. There shall be three kinds of execution: One against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

Carter Code, sec. 266; Charlton Code, sec. 266.

By whom issued, what to contain and require.

SEC. 1099. The writ of execution shall be issued by the clerk and directed to the marshal. It shall contain the name of the court, the names of the parties to the action, and the title thereof. It shall substantially describe the judgment; and if it be for money, shall state the amount actually due thereon and shall require the marshal substantially as follows:

First. If it be against the property of the judgment debtor and the judgment directs particular property to be sold, it shall require the marshal to sell such particular property and apply the proceeds as directed by the judgment; otherwise it shall require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property can not be found, then out of the real property belonging to him on the day when the judgment was docketed in the recording district or at any time thereafter;

Second. If it be issued after the death of the judgment debtor and be against real or personal property, it shall require the marshal to satisfy the judgment, with interest, out of any property belonging to the deceased debtor in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such;

Third. If it be against the person of the judgment debtor, it shall require the marshal to arrest such debtor and commit him to jail until he shall pay the judgment, with interest, or be discharged according to law;

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the marshal to deliver the possession of the

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same, particularly describing it, to the party entitled thereto, and may at the same time require the marshal to satisfy any costs, charges, damages, or rents, and profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified thereof, if a delivery thereof can not be had; and if sufficient personal property can not be found, then out of the real property as provided in the first subdivision of this section, and in that respect it is to be deemed an execution against property.

Carter Code, sec. 267; Charlton Code, sec. 267.

Marks *v.* Willis (58 Pac. Rep., 526). German Loan Soc. *v.* Kern (62 Pac. Rep., 788). Flint *v.* Phipps (25 Pac. Rep., 725). Jones *v.* Dove (7 Or. Rep., 467). Hexter *v.* Poppleton (9 Or. Rep., 481). Wright *v.* Young (6 Or. Rep., 87). Marx *v.* Stephens (63 Pac. Rep., 824). Barr *v.* Warner (62 Pac. Rep., 899). Bently *v.* Jones (8 Or. Rep., 47). Bower *v.* Holladay (22 Pac. Rep., 553). Watson *v.* Moore (66 Pac. Rep., 815). Guille *v.* Wong Fook (11 Pac. Rep., 277). Kohn *v.* Hinshaw (20 Pac. Rep., 629). Leve *v.* Fraser (70 Pac. Rep., 376). Holmes *v.* Wolfard (81 Pac. Rep., 819).

How indorsed by marshal and when returnable.

SEC. 1100. The marshal shall indorse upon the writ of execution the time when he received the same, and such execution shall be returnable, within sixty days after its receipt by the marshal, to the clerk's office from whence it issued.

Carter Code, 268; Charlton Code, sec. 268.

Mason *v.* Bennett (52 Fed. Rep., 343; 1 Alaska Rep., 743). Faull *v.* Cook (26 Pac. Rep., 662). Pursel *v.* Deal (18 Pac. Rep., 461). U. S. Mtg. & Trust Co. *v.* Marquam (69 Pac. Rep. 1).

When execution issued against the person.

SEC. 1101. If the action be one in which the defendant might have been arrested, as provided by section nine hundred and thirty-one, an execution against the person of the judgment debtor may be issued after the return of the execution against his property unsatisfied in whole or in part, as follows:

First. When it appears from the record that the cause of action is also a cause of arrest, as prescribed in section nine hundred and thirty-one, such execution may issue of course;

Second. When no such cause of arrest appears from the record, such execution may issue for any of the causes prescribed in section nine hundred and thirty-one that may exist at the time of the application therefor, upon leave of the court or judge thereof;

Third. When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either case the order has not been vacated, such execution may issue of course;

Fourth. When execution is issued against the person of the defendant by leave of the court, it shall be applied for and allowed in the manner provided in section nine hundred and thirty-two for allowing a writ of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in sections nine hundred and fifty-three and nine hundred and fifty-four for the discharge of a defendant who has been provisionally arrested.

Carter Code, sec. 269; Charlton Code, sec. 269.

State *v.* Downing (66 Pac. Rep., 917). Banning *v.* Roy (82 Pac. Rep., 708).

How person arrested on execution imprisoned.

SEC. 1102. A person arrested on execution shall be imprisoned in jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same

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manner and to the same extent as prescribed in sections nine hundred and fifty and nine hundred and fifty-one.

Carter Code, sec. 270; Charlton Code, sec. 270.

Execution against property may issue after death of judgment debtor, except.

SEC. 1103. Notwithstanding the death of a party after judgment, execution thereon against his property or for the delivery of real or personal property may be issued and executed in the same manner and with the same effect as if he were still living, but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party without leave of the commissioner having authority to issue letters testamentary or of administration upon said estate.

Carter Code, sec. 271; Charlton Code, sec. 271.

Knott *v.* Shaw (5 Or. Rep., 484). Barrett *v.* Furnish (26 Pac. Rep., 861). Bower *v.* Holladay (22 Pac. Rep., 553). Watson *v.* Moore (66 Pac. Rep., 814).

Exemption of homestead from judicial sale.

SEC. 1104. The homestead of any family, or the proceeds thereof, shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of and owned by such family or some members thereof. It shall not exceed two thousand five hundred dollars in value, nor exceed one hundred and sixty acres in extent if not located in a town or city laid off into blocks or lots, or if located in any such town or city, then it shall not exceed one-fourth of one acre. This act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife. When any officer shall levy upon such homestead, the owner thereof, or the wife, husband, agent, or attorney of such owner, may notify such officer that he claims such premises as his homestead, describing the same by metes and bounds, lot or block, or legal subdivision of the United States, whereupon such officer shall notify the creditor of such claim, and if such homestead shall exceed the maximum in this section, and he deem it of greater value than two thousand five hundred dollars, then he may direct the marshal to select three disinterested persons, who shall examine and appraise such homestead, under oath, commencing with the twenty acres of lot upon which the dwelling is located, appraising each lot or twenty acres separately; and if the same exceed two thousand five hundred dollars, then the marshal shall proceed to sell all in excess of two thousand five hundred dollars by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor, if he chooses to direct; otherwise he shall sell the same as aforesaid so as to leave the homestead as compact as possible. The homestead aforesaid shall be exempt from sale or any legal process after the death of the person entitled thereto for the collection of any debts for which the same could not have been sold during his lifetime.

Carter Code, sec. 272; Charlton Code, sec. 272.

Walker *v.* Harold (74 Pac. Rep., 705). Groves *v.* Osborn (79 Pac. Rep., 500). Adams *v.* Church (70 Pac. Rep., 1037). Wallowa Nat. Bank *v.* Riley (45 Pac. Rep., 766). Faull *v.* Cook (26 Pac. Rep., 662). Mansfield *v.* Hill (107 Pac. Rep., 471). Mansfield *v.* Hill (108 Pac. Rep., 1007).

What property liable to execution and what exempt.

SEC. 1105. All other property, including franchises or rights or interests therein, of the judgment debtor shall be liable to an execution, except as in this section provided. The following property shall be exempt from execution if selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon there-

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after before sale thereof as the same shall be known to him, and not otherwise:

First. The earnings of the judgment debtor, for his personal services rendered at any time within sixty days next preceeding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor;

Second. Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars;

Third. Necessary wearing apparel owned by any person for the use of himself or his family: *Provided*, Watches or jewelry exceed in value the sum of one hundred dollars shall not be exempt by virtue of this subdivision;

Fourth. The tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living to the value of five hundred dollars; also sufficient quantity of food to support such team, if any, for six months; the word "team" in this subdivision shall not be construed to include more than one yoke of oxen, or a span of horses or mules, or two reindeers, or six dogs, as the case may be;

Fifth. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; household goods, furniture, and untensils to the value of three hundred dollars; also food sufficient to support such animals, if any for six months, and provisions actually provided for family use and necessary for the support of such person and family for six months.

Sixth. The seat or pew occupied by the head of a family or his family in a place of public worship;

Seventh. All property of any public or municipal corporation;

Eighth. No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price.

Carter Code, sec. 273; Charlton Code, sec. 273.

*Property not liable*: Smith *v.* Ingles (2 Or. Rep., 43). Blomfield *v.* Humason (4 Pac. Rep., 332). Silver *v.* Lee (63 Pac. Rep., 882). Wyatt *v.* Wyatt (49 Pac. Rep., 855). Dahms *v.* Sears (11 Pac. Rep., 891).

*Property liable*: Williams *v.* Fallick (3 Pac. Rep., 469). Hughes *v.* Oregonian R. Co. (2 Pac. Rep., 94). White *v.* Thompson (3 Or. Rep., 115). Pogue *v.* Simon (81 Pac. Rep., 566).

*Exempt property*: White *v.* Thompson (3 Or. Rep., 115). Harrisburg Lbr. Co. *v.* Washburn (44 Pac. Rep., 390). Thiebault *v.* Lennon (64 Pac. Rep., 450). Bond *v.* Turner (54 Pac. Rep., 158).

*Wearing apparel*: Stewart *v.* McClung (8 Pac. Rep., 447).

*Seat or pew*: Harrisburg Lbr. Co. *v.* Washburn (44 Pac. Rep., 390).

*Public property*: Bank of Idaho *v.* Malheur County (45 Pac. Rep., 781). Portland Lbr. Co. *v.* School Dist. (10 Pac. Rep., 350).

NOTE.—As to lien of judgment, see sec. 1092, chap. 30, ante.

Execution against property, how executed.

SEC. 1106. When the writ of execution is against the property of the judgment debtor, it shall be executed by the marshal as follows:

First. If property has been attached, he shall indorse on the execution, and pay to the clerk forthwith, the amount, if any, of the proceeds of sales of perishable property, or debts due the defendant received by him, sufficient to satisfy the judgment;

Second. If the judgment is not then satisfied and property has been attached and remains in his custody, he shall sell the same or sufficient thereof to satisfy the judgment;

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Third. If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment;

Fourth. Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections nine hundred and seventy-two, nine hundred and seventy-three, and nine hundred and seventy-five, omitting the filing of the certificate provided for in section nine hundred and seventy-four;

Fifth. Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the marshal on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day on which the writ is returnable;

Sixth. When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property or the proceeds thereof remain in the custody of the marshal, he shall deliver the same to the judgment debtor.

Carter Code, sec. 274; Charlton Code, sec. 274.

Wright *v.* Young (6 Or. Rep., 87). Bachelor *v.* Richardson (21 Pac. Rep., 392).

NOTE.—As to how executed and effect as to third person, see sec. 972, 973, chap. 14, ante.

Same subject.

SEC. 1107. In the case of property in the possession of or owing from any garnishee mentioned in section nine hundred and seventy-five the marshal shall proceed as follows:

First. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor, which is then due, if such debt is not paid by such garnishee to the marshal on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution was against the property of the garnishee. But if such debt be not then due, the marshal shall sell the same according to the certificate, as other property;

Second. If in like manner it appear that the judgment debtor has rights or shares in the stock of the garnishee, as provided in section nine hundred and seventy-five, the marshal shall sell the same according to the certificate, as other property;

Third. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the marshal on demand he shall levy upon the same wherever he may find it. But if such property is in the possession of such garnishee upon a bailment then unexpired, the marshal shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

Carter Code, sec. 275; Charlton Code, sec. 275.

Dewitt *v.* Kelly (23 Pac. Rep., 666). Adamson *v.* Fraser (66 Pac. Rep., 810; 67 Pac. Rep., 300).

NOTE.—The reference to sec. 975 (143, Carter Code) is obviously erroneous. The reference should be to sec. 140, our sec. 972.

When garnishee gives marshal certificate, how marshal to proceed.

SEC. 1108. When a marshal with an execution levies upon any of the personal property mentioned in subdivision three of section nine hundred and seventy-two, and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnish him the certificate required in section nine hundred and seventy-five, he shall proceed thereafter in reference to such property as provided in section eleven hundred and six of this title. Such property may be delivered, paid, or transferred to the marshal at the time of levy, or sufficient thereof to satisfy the execution, and the marshal's receipt to the

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person, association, or corporation, as the case may be, shall be a sufficient discharge therefor.

Carter Code, sec. 276; Charlton Code, sec. 276.

When marshal may leave personal property in possession of judgment debtor.

SEC. 1109. When the marshal shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same or any part thereof in his possession until the day of sale upon the defendant executing a written undertaking to the marshal with sufficient surety in double the value of such property to the effect that it shall be delivered to the marshal at the time and place of sale, and for nondelivery thereof an action may be maintained upon such undertaking by the marshal or the plaintiff in the execution, but the marshal shall not thereby be discharged from his liability to the plaintiff for such property.

Carter Code, sec. 277; Charlton Code, sec. 277.
Miller *v.* Shute (107 Pac., 467).

Notice of sale on execution, how given.

SEC. 1110. Before the sale of property on execution notice thereof shall be given, as follows:

First. In case of personal property, by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to take place, not less than ten days prior to the day of sale; one of said notices shall be posted on the door of the post office nearest to the place where the sale is to take place.

Second. In case of real property by posting a similar notice particularly describing the property for four weeks prior to the day of sale in three public places, as provided in the first subdivision of this section, and publishing a copy thereof once a week for the same period in a newspaper published nearest to the place of sale.

Carter Code, sec. 278; Charlton Code, sec. 278.

Walker *v.* Goldsmith (12 Pac. Rep., 537). O'Hara *v.* Parker (39 Pac. Rep., 1004). Patterson *v.* Portland Smelt Wks. (56 Pac. Rep., 407). German Loan Soc. *v* Kearn (62 Pac. Rep., 788). Bank of Brit. Col. *v.* Page (7 Or. Rep., 455). U. S. Mtg. & Trust Co. *v.* Marquam (69 Pac. Rep., 41).

Sales, where and how made.

SEC. 1111. All sales of property upon execution shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery and not in the possession of a third person, association, or corporation it shall be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property and consists of several known lots or parcels they shall be sold separately or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion of it shall be sold separately.

Carter Code, sec. 279; Charlton Code, sec. 279.

Griswold *v.* Stoughton (2 Or. Rep., 61). Dolph *v.* Barney (5 Or. Rep., 211). Bank of Brit. Col. *v.* Page (7 Or. Rep., 455). Balfour *v.* Burnett (41 Pac. Rep., 1). Leinenwebber *v.* Brown (34 Pac. Rep., 475). Bays *v.* Troulson (35 Pac. Rep., 26). O'Hara *v.* Parker (39 Pac. Rep., 1004). Flanders *v.* Aumack (51 Pac. Rep., 447). Burroughs *v.* Parker (48 Pac. Rep., 1100). Hexter *v.* Snyder (12 Pac. Rep., 668). Hoxter *v.* Poppleton (9 Or. Rep., 482). Cartright *v.* Savage (5 Or. Rep., 397). Patterson *v.* Portland Smelt. Wks. (56 Pac. Rep., 407). Brentano *v.* Brentano (67 Pac. Rep., 922). Brand *v.* Baker (71 Pac. Rep., 320). Nodine *v.* Richmond (87 Pac. Rep., 775).

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When marshal may adjourn sale.

SEC. 1112. If, at the time appointed for the sale, the marshal should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time. The marshal for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ.

Carter Code, sec. 280; Charlton Code, sec. 280.

Mason *v.* Bennett (52 Fed. Rep., 343).

Bill of sale and delivery by marshal of personal property.

SEC. 1113. When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, shall pay the purchase money, the marshal shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the marshal shall give the purchaser a bill of sale with the like acknowledgment.

Carter Code, sec. 281; Charlton Code, sec. 281.

When execution not to issue except by leave of the court and how leave obtained.

SEC. 1114. Whenever, after the entry of judgment, a period of five years shall elapse without an execution being issued on such judgment, thereafter an execution shall not issue except as in this section provided:

First. The party in whose favor a judgment is given shall file a motion with the clerk of the court where the judgment is entered for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, and the amonut claimed to be due thereon, or the particular property of which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action;

Second. At any time after filing such motion the party may cause a summons to be served on the judgment debtor in like manner and with like effect as in an action. In case such judgment debtor be dead, the summons may be served upon his representative by publication as in the case of a nonresident, or by actual service of the summons;

Third. The summons shall be substantially the same as in an action, but instead of a notice therein required it shall state the amount claimed or the property sought to be recovered, in the manner prescribed in subdivision one of this section;

Fourth. The judgment debtor, or, in case of his death, his representatives, may file an answer to such motion within the time allowed to answer a complaint in an action, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur to the same or to the reply. The pleading shall be subscribed and verified and the proceedings conducted as in an action;

Fifth. The word "representatives" in this section shall be deemed to include any or all of the persons mentioned in subdivision two of section ten hundred and ninety-nine in whose possession property of the judgment debtors may be which is liable to be taken and sold or delivered in satisfaction of the execution and not otherwise;

Sixth. The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be de-

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livered; it shall be entered in the journal and docketed as a judgment, and a roll thereafter prepared and filed, or a final record made of the proceedings, as the case may be, in the same manner as a judgment.

Carter Code, sec. 282; Charlton Code, sec. 282.

Murch *v.* Moore (2 Or. Rep., 189). Strong *v.* Barnhart (5 Or. Rep., 496). Ladd *v.* Higler (5 Or. Rep., 296). Brandt *v.* Brandt (67 Pac. Rep., 508). Pursel *v.* Deal (18 Pac. Rep., 461). Beekman *v.* Hamlin (24 Pac. Rep., 985; 31 Pac. Rep., 707). Eddy *v.* Coldwell (31 Pac. Rep., 475).

Confirmation of sale of real estate, proceedings thereon.

SEC. 1115. Whenever real property is sold on execution the provisions of this section shall apply to the subsequent proceedings.

First. The plaintiff in the writ of execution shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or, in case of his death, his representative, shall file with the clerk ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto;

Second. If such objections be filed, the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date;

Third. Upon the return of the execution the marshal shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale;

Fourth. Upon a resale the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action, or proceeding whatever;

Fifth. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made, upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

Carter Code, sec. 283; Charlton Code, sec. 283.

NOTE.—See for subdivision 4 of this section.

Ebner *v.* Held (2 Alaska Rep., 605). Mason *v.* Bennett (52 Fed. Rep., 343; 1 Alaska Rep., 743).

*Generally*: Marx *v.* Hanthorn (30 Fed. Rep., 582). Miller *v.* Bank of Brit. Col. (2 Or. Rep., 291). Miller *v.* Or. City Mfg. Co. (3 Or. Rep., 27). Flint *v.* Phipps (25 Pac. Rep., 725). Leinenwebber *v.* Brown (34 Pac. Rep., 475). Farmers Loan Co. *v.* Or. Pac. R. Co. (40 Pac. Rep., 1089). Wright *v.* Young (6 Or. Rep., 87). Dell *v.* Estees (10 Or. Rep., 359). Butler *v.* Smith (25 Pac. Rep., 381). Patterson *v.* Portland Smelting Works (56 Pac. Rep., 407). Dolph *v.* Barney (5 Or. Rep., 191). McRae *v.* Daviner (8 Or. Rep., 63). Balfour *v.* Burnett (41 Pac. Rep.,

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1). Trullinger *v.* Kofoed (8 Or. Rep., 436). Close *v.* Riddle (67 Pac. Rep., 932). Brand *v.* Baker (71 Pac. Rep., 283). Hanley *v.* Kubli (74 Pac. Rep., 224; 75 Pac., 209). Pogue *v.* Simons (81 Pac. Rep. 566). Fuller *v.* Hager (83 Pac. Rep. 782). Nodine *v* Richmon (87 Pac. Rep., 775). Miller *v.* Achurch (93 Pac. Rep., 332).

Who liable for purchase money in case of eviction of purchaser.

SEC. 1116. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with legal interest and the costs and disbursements of the action by which he was evicted, from the plaintiff in the writ of execution.

Carter Code, sec. 284; Charlton Code, sec. 284.

Contribution among joint judgment debtors.

SEC. 1117. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment he file with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or repayment; upon filing such notice the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

Carter Code, sec. 285; Charlton Code, sec. 285.

*Contribution*: Durbin *v.* Kuney (23 Pac. Rep., 661). Ladd *v.* Chamber of Commerce (61 Pac. Rep., 1127). Van Winkle *v.* Johnson (5 Pac. Rep., 922). Fischer *v.* Gaither (51 Pac. Rep., 733). Thompson *v.* Dekum (52 Pac. Rep., 517).

*Subrogation*: Baer *v.* Ballingall (61 Pac. Rep., 852). Keel *v.* Levy (24 Pac. Rep., 253). Marsters *v.* Umpqua Valley Oil Co (90 Pac. Rep., 151).

Sale of real property, when absolute and when subject to redemption.

SEC. 1118. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the marshal shall give to the purchaser a certificate of the sale containing—

First. A particular description of the property sold;

Second. The price bid for each distinct lot or parcel;

Third. The whole price paid;

Fourth. When subject to redemption, it shall be so stated.

The matters contained in such certificate shall be substantially stated in the marshal's return of his proceedings upon the writ.

Carter Code, sec. 286; Charlton Code, sec. 286.

Holmes *v.* Wolfard (81 Pac. Rep., 819). Katz *v.* Obenchain (85 Pac. Rep., 617). Ayers *v.* Lund (89 Pac. Rep., 806).

Who may redeem.

SEC. 1119. Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

First. The judgment debtor, or his successor in interest, in the whole or any part of the property separately sold;

Second. A creditor having a lien by judgment, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.

The persons mentioned in subdivision two of this section, after having redeemed the property, are to be termed redemptioners.

Carter Code, sec. 287; Charlton Code, sec. 287.

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*Redemption*: Cartwright *v.* Savage (5 Or. Rep., 399). Lauriat *v.* Stratton (11 Fed. Rep., 108). Settlemeier *v.* Newsome (10 Or. Rep., 446). Flanders *v.* Aumack (51 Pac. Rep., 447). Willis *v.* Miller (31 Pac. Rep., 827). Larch Mountain Inv. Co. *v.* Garbade (68 Pac. Rep., 6).

*Who may redeem*: Rosenburg *v.* Croisan (23 Pac. Rep., 847). Chavener *v.* Wood (2 Or. Rep., 182). Lauriat *v.* Stratton (11 Fed. Rep., 109).

*Effect of redemption*: Dray *v.* Dray (27 Pac. Rep., 223). Cartright *v.* Savage (5 Or. Rep., 397).

NOTE.—And see cases cited under sec. 1126, post.

*Rights of purchasers*: Doerhoefer *v.* Farrell (45 Pac. Rep., 797).

*Constitutional law*: State *v.* Sears (46 Pac. Rep., 785). Barnitz *v.* Beverly (163 U. S. Rep., 118).

When lien creditor may redeem from purchaser.

SEC. 1120. A lien creditor may redeem the property within sixty days from the date of the order confirming the sale by paying the amount of the purchase money, with interest at the rate of eight per centum per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon; and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

Carter Code, sec. 288; Charlton Code, sec. 288.

When lien creditor may redeem from redemptioner.

SEC. 1121. If the property be so redeemed, any other lien creditor may, within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the rate of eight per centum per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon, and, unless his lien be prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of eight per centum per annum thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest.

Carter Code, sec. 289; Charlton Code, sec. 289.

When judgment debtor may redeem.

SEC. 1122. The judgment debtor or his successor in interest may redeem the property at any time prior to the confirmation of sale on paying the amount of the purchase money, with interest at the rate of eight per centum per annum thereon from the date of sale, together with the amount of any taxes which the purchaser may have paid thereon after the purchase; but if the judgment debtor do not redeem until after the confirmation of the sale, thereafter he shall redeem within twelve months from such order of confirmation and not otherwise.

Carter Code, sec. 290; Charlton Code, sec. 290.

Kaston *v.* Storey (80 Pac. Rep., 217).

Purchaser or redemptioner, when entitled to conveyance.

SEC. 1123. If redemption be not made as prescribed in this act, or when redemption is made and a period of sixty days shall have elapsed without any other redemption, the purchaser or the redemptioner, as the case may be, shall be entitled to a conveyance from the marshal. If the judgment debtor redeem at any time before the time for redemption expires, the effect of the sale shall terminate, and he shall be restored to his estate.

Carter Code, sec. 291; Charlton Code, sec. 291.

*Generally*: Dray *v.* Dray (27 Pac. Rep., 223). Gest *v.* Packwood (39 Fed. Rep., 532). Burroughs *v.* Parker (48 Pac. Rep., 1100). Flanders *v.* Aumack (51 Pac. Rep., 447). Dolph *v.* Barney (5 Or. Rep., 191). Willamette R. E. Co. *v.* Hendricks (42 Pac. Rep., 515).

*Who may execute*: Moore *v.* Willamette Trans Co. (7 Or. Rep., 359). Faull *v.* Cooke (26 Pac. Rep., 662). Marks *v.* Hanthorne (30 Fed. Rep., 582).

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Mode of proceeding to redeem.

SEC. 1124. The mode of redeeming shall be as provided in this section.

The person seeking to redeem may redeem by paying to the marshal the sum required. The marshal shall give the person redeeming a certificate, as in case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof and shall at once give notice of such redemption to the party from whom redeemed. A party seeking to redeem shall submit to the marshal the evidence of his right thereto, as follows:

First. If he be a lien creditor, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where such judgment is docketed, or if he seek to redeem upon a mortgage, the certificate of the record thereof.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent; an affidavit by himself or agent showing the amount then actually due on the judgment or mortgage.

Third. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the marshal the like evidence thereof and of the amount due thereon, or the same may be disregarded.

When two or more persons apply to the marshal to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The marshal shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a marshal shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evidence and the tender of the money to the marshal as herein provided, he may be required by order of the court or judge thereof to allow such redemption.

Carter Code, sec. 292; Charlton Code, sec. 292.

Court may restrain waste prior to conveyance.

SEC. 1125. Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

Carter Code, sec. 293; Charlton Code, sec. 293.

Who entitled to possession from time of sale to conveyance.

SEC. 1126. The purchaser from the day of sale until a resale or a redemption, and a redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

Carter Code, sec. 294; Charlton Code, sec. 294.

Gest *v.* Packwood (39 Fed. Rep., 532). Bank of British Col. *v.* Harlow (9 Or. Rep., 338). Cartright *v.* Savage (5 Or. Rep., 397). Balfour *v.* Rogers (64 Fed. Rep., 927). Jones *v.* Adams (59 Pac. Rep., 811; 50 L. R. A., 388). Aiken *v.* Aiken (6 Pac. Rep., 682). U. S. Mtg. & Trust Co. *v.* Willis (69 Pac. Rep., 266).

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Order to examine judgment debtor.

SEC. 1127. After the issuing of an execution against property; and upon proof by the affidavit of the plaintiff in the writ, or otherwise, to the satisfaction of the court or judge thereof that the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same before such court or judge, or before a referee appointed by such court or judge, at a time and place specified in the order.

Carter Code, sec. 295; Charlton Code, sec. 295.

Knowles *v.* Herbert (4 Pac. Rep., 126). Williams *v.* Gallick (3 Pac. Rep., 469). Hughes *v.* Oregonian R. Co. (2 Pac. Rep., 94). Matlock *v.* Babb (49 Pac. Rep., 873). State *v.* Downing (66 Pac. Rep., 917). Hammer *v.* Downing (66 Pac. Rep., 916). Kirkwood *v.* Washington County (52 Pac. Rep., 568). State *v.* Guttridge (80 Pac. Rep., 98).

Examination of judgment debtor, proceedings thereon.

SEC. 1128. On the appearance of the judgment debtor, he may be examined on oath concerning his property. His examination, if required by the plaintiff in the writ, shall be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in his behalf, and if by such examination it appear that the judgment debtor has any property liable to execution the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on, by execution, in the manner and with the effect as provided in this chapter, or both, as may seem most likely to effect the object of the proceeding.

Carter Code, sec. 296; Charlton Code, sec. 296.

Hammer *v.* Downing (66 Pac. Rep., 917).

Restraining order against judgment debtor.

SEC. 1129. At the time of allowing the order prescribed in section eleven hundred and twenty-eight, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any of his property liable to execution pending the proceeding. For disobeying any order or requirement authorized by sections eleven hundred and twenty-seven, eleven hundred and twenty-eight, and eleven hundred and twenty-nine the judgment debtor may be punished as for a contempt.

Carter Code, sec. 297; Charlton Code, sec. 297.

When judgment debtor may be arrested.

SEC. 1130. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof by affidavit of the party, or otherwise to his satisfaction, that there is danger of the debtor leaving the district, or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the marshal to arrest him and bring him before the court or judge. Upon being brought before the court or judge he may be examined on oath, and if it then appear that there is danger of the debtor leaving the district, and that he has property which he unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking with one or more sureties that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to jail by warrant of the judge.

Carter Code, sec. 298; Charlton Code, sec. 298.

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Order to examine garnishee, proceedings thereon.

SEC. 1131. Whenever the marshal, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision three of section nine hundred and seventy-two for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the marshal a certificate in the manner prescribed in section nine hundred and seventy-four. If such person or officer refuse to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in such section against such person or officer. Thereafter the proceeding upon such order shall be conducted in the manner prescribed from section nine hundred and eighty-four to section nine hundred and ninety-three, inclusive.

Carter Code, sec. 299; Charlton Code, sec. 299.

NOTE.—Reference to sec. 974, being 142 (Carter), obviously erroneous; reference intended is to sec. 143 (Carter), sec. 975, this code.

What officers not liable to answer as garnishee.

SEC. 1132. No public officer shall be liable as garnishee for moneys in his possession as such officer, belonging to or claimed by any judgment debtor.

Carter Code, sec. 300; Charlton Code, sec. 300.

Keene *v.* Smith (75 Pac. Rep., 1065).

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# CHAPTER THIRTY-TWO.

## OF ACTIONS TO RECOVER THE POSSESSION OF REAL PROPERTY.


Sec.
1133. Who may bring such action, and against whom.
1134. When landlord may be made defendant in place of tenant.
1135. What to be pleaded in complaint.
1136. Defendant not to be allowed to give evidence in certain matters, unless. Judgment, when conclusive against landlord.
1137. What the jury shall find by their verdict.
1138. What damages may be recovered, and when the value of permanent improvements may be set off against such damages.
1139. Verdict when right of possession expires after commencement of action.
1140. Order to make survey of the property.
1141. Same subject.
1142. Action not to be prejudiced by alienation of person in possession.
1143. Mortgagee can not maintain action against mortgagor.
1144. Action by tenant in common or for dower, what must be shown.
1145. Action against lessee on failure to pay rent.
1146. When judgment conclusive, and upon whom.
1147. Possession not to be affected by order allowing new trial.
1148. Admeasurement of dower after judgment.


June 6, 1900.
31 Stat. L., 383–385.
R. S., 2d Supp., pp. 1257–1259.
Who may bring such action and against whom.

SEC. 1133. Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof.

Carter Code, sec. 301; Charlton Code, sec 301.

Allen *v.* Myers (1 Alaska Rep., 120).

In Kimball *v.* Miller (1 Alaska Rep., 348) it is held, that under the provisions of sec. 1133 of this code, a complaint in ejectment may allege ownership, ouster, and damage for a wrongful withholding as one cause of action, and upon such cause of action may recover possession and damages for withholding.

Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 452). Fox, Adminr., *v.* McKay (1 Alaska Rep., 329). Nome-Sinook Min. Co. *v.* Simpson (1 Alaska Rep., 578). Young *v.* Goldstein (97 Fed. Rep., 303; 1 Alaska Rep., 787).

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Walsh *v.* Ford (1 Alaska Rep., 146). Malone *v.* Hoxsie (1 Alaska Rep., 267). Campbell *v.* Silverbow Basin Min. Co. (49 Fed. Rep., 77; 1 C. C. A., 155; 1 Alaska Rep., 735). Miller *v.* Blackett (47 Fed. Rep., 547; 1 Alaska Rep., 735). Price *v.* Brockway (1 Alaska Rep., 233). Kohn *v.* McKinnon (90 Fed. Rep., 623; 1 Alaska Rep., 736). Yager *v.* Ring (1 Alaska Rep., 305). Maloney *v.* Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 774). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 784). Moore *v.* Steelsmith (1 Alaska Rep., 121). Black *v.* Teeter (1 Alaska Rep., 831). Pacey *v.* McKinney (125 Fed. Rep., 675; 60 C. C. A., 365; 2 Alaska Rep., 671). Brosman *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671). Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 672). Shields *v.* Mongollon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 672). Crawford *v.* Burr, 2 Alaska Rep., 33). Tyee Consol. Min. Co. *v.* Langstedt (121 Fed. Rep., 709; 58 C. C. A., 129; 2 Alaska Rep., 697). Maloney *v.* Jackson (137 Fed. Rep., 878; 70 C. C. A., 216; 2 Alaska Rep., 711). Bulette *v.* Dodge (2 Alaska Rep., 427). Charlton *v.* Kelly (2 Alaska Rep., 532). Tyee Consol Min. Co. *v.* Jennings (137 Fed. Rep., 863; 70 C. C. A., 393; 2 Alaska Rep., 713). Dufresne *v.* Nor. Lt. & Min. Co. (2 Alaska Rep., 592). Montagne *v.* Labay (2 Alaska Rep., 575). Elbing *v.* Hastings (3 Alaska Rep., 128). Delaney's Estate *v.* Kiernan (3 Alaska Rep., 199). Steil *v.* Desmore (3 Alaska Rep., 398). Martin *v.* White (146 Fed. Rep., 461). Carlson *v.* Sullivan (146 Fed. Rep., 476). Lindblom *v.* Rocks (146 Fed. Rep., 660). Fogle *v.* Warsing (146 Fed. Rep., 949). McKay *v.* Neussler (148 Fed. Rep., 86). Chilberg *v.* Consumers Mill Co. (3 Alaska Rep., 235). Johnston *v.* Croson G. M. Co. (157 Fed. Rep., 145). Halla *v.* Cowden (170 Fed. Rep., 559). Eadie *v.* Chambers (172 Fed. Rep., 73). Bush *v.* Pioneer Min. Co. (179 Fed. Rep., 78).

*Generally*: Goldsmith *v.* Smith (21 Fed. Rep., 613). Norton *v.* Elwood (41 Pac. Rep., 926). Phillipi *v.* Thompson (8 Or. Rep., 433). Johnson *v.* Crookshanks (28 Pac. Rep., 78). Duffey *v.* Mix (33 Pac. Rep., 807). O'Hara *v.* Parker (39 Pac. Rep., 1004). Humphries *v.* Taylor (5 Or. Rep., 261). Aiken *v.* Aiken (6 Pac. Rep., 682). McKay *v.* Freeman (6 Or. Rep., 449). Keith *v.* Cheney (1 Or. Rep., 285). Rader *v.* Allen (41 Pac. Rep., 154). Joy *v.* Stump (12 Pac. Rep., 929). Wilson *v.* Fine (38 Fed. Rep., 789). Mickey *v.* Stratton (5 Saw. Rep., 475). Campbell *v.* Silverbow Basin Min. Co. (49 Fed. Rep., 47). O. R. & N. Co. *v.* Hertzberg (37 Pac. Rep., 1019). Minter *v.* Durham (11 Pac. Rep., 231). Dolph *v.* Barney (5 Or. Rep., 215). Abraham *v.* Chenoweth (9 Or. Rep., 348). Morrison *v.* Holladay (39 Pac. Rep., 1100). Lohman *v.* Helmer (104 Fed. Rep., 182). Tilton *v.* Barrell (14 Fed. Rep., 609). McLeod *v.* Lloyd (71 Pac. Rep., 795). Trotter *v.* Town of Stayton (77 Pac. Rep., 395). Altshul *v.* Casey (76 Pac. Rep., 1083). Coles *v.* Meskiman (85 Pac. Rep., 67). Warren Valley Stock Co. *v.* Morrow (86 Pac. Rep., 369). Sommer *v.* Compton (96 Pac. Rep., 124).

*Defenses*: Frizelle *v.* O. R. & N. Co. (30 Pac. Rep., 313).

When landlord may be made defendant in place of tenant.

SEC. 1134. A defendant who is in actual possession may, for answer, plead that he is in possession only as tenant of another, naming him and his place of residence; and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the day the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff, he shall be required to appear and answer within twenty days from notice of the pendency of the action and the order making him defendant, or such further time as the court or judge thereof may prescribe.

Carter Code, sec. 302; Charlton Code, sec. 302.

Fitch *v.* Cornell (1 Saw. Rep., 156). McDonald *v.* Cooper (32 Fed. Rep., 746). Steel *v.* Densmore (3 Alaska Rep., 398).

What to be pleaded in complaint.

SEC. 1135. The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that the defendant wrongfully withholds the same from him to his damage in such sum as may be therein claimed. The property shall be described with

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such certainty as to enable the possession thereof to be delivered if a recovery be had.

Carter Code, sec. 303; Charlton Code, sec. 303.

Nome-Sinook Co. *v.* Simpson (1 Alaska Rep., 589). Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 452). Black *v.* Teeter (1 Alaska Rep., 563). Maloney *v.* Adsitt (175 U. S. Rep., 281; 1 Alaska Rep., 798). Kimball *v.* Miller (1 Alaska Rep., 347). Pacey *v.* McKinney (125 Fed. Rep., 675; 60 C. C. A., 365; 2 Alaska Rep., 670). Brosnan *v.* White (136 Fed. Rep., 74; 68 C. C. A., 642; 2 Alaska Rep., 671. Steel *v.* Desmore (3 Alaska Rep., 398). Mitchell *v.* Campbell (24 Pac. Rep., 455). Bingham *v.* Kern (23 Pac. Rep., 182). Richards *v.* Crews (18 Pac. Rep., 925). Thompson *v.* Wolf (6 Or. Rep., 308). Johnson *v.* Crookshanks (28 Pac. Rep., 78). Pease *v.* Hanna (3 Or. Rep., 301). McKay *v.* Freeman (6 Or. Rep., 449). Little *v.* Pherson (56 Pac. Rep., 807). Dolph *v.* Barney (5 Or. Rep., 191). McLeod *v.* Lloyd (71 Pac. Rep., 795).

Defendant not to be allowed to give evidence in certain matters, unless.

SEC. 1136. The defendant shall not be allowed to give in evidence any estate in himself, or another in the property, or any license or right to the possession thereof, unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license, or right to the possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against the landlord who has been made defendant in place of the tenant to the same extent as if the action had been originally commenced against him.

Judgment, when conclusive against landlord.

Carter Code, sec. 304; Charlton Code, sec. 304.

The Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 452). Archer *v.* Beihl (136 Fed. Rep., 113; 69 C. C. A., 101; 2 Alaska Rep., 639). Piper *v.* Cashel (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 672). Shields *v.* Mongollon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 676; Walton *v.* Wild Goose (123 Fed. 209; 60 C. C. A., 155; 2 Alaska Rep., 728). Thompson *v.* Burk (2 Alaska Rep., 249). Steil *v.* Dessmore (3 Alaska Rep., 398). Mitchell *v.* Campbell (24 Pac. Rep., 455). Phillipi *v.* Thompson (8 Or. Rep., 428). O. R. & N. Co. *v* Hertzberg (37 Pac. Rep., 1019). Hall *v.* Austin (1 Deady Rep., 104). Thornburn *v.* Doscher (32 Fed. Rep., 811). Stark *v.* Star (1 Saw. Rep., 17). Witherell *v.* Wiberg (4 Saw. Rep., 234). Fitch *v.* Cornell (1 Saw. Rep., 158). Wythe *v.* Myers (3 Saw. Rep., 598). Moore *v.* Frazer (16 Pac. Rep., 869). Hemmenway *v.* Francis (26 Pac. Rep., 301). McIntyre *v.* Kamm (7 Pac. Rep., 27). Newby *v.* Rowland (1 Pac. Rep., 708). Minter *v.* Durham (11 Pac. Rep., 231). Moore *v.* Willamette Trans. Co. (7 Or. Rep., 356). Casey *v.* Altschul (76 Pac. Rep., 1083). Neal *v.* Davis (99 Pac. Rep., 69).

What the jury shall find by their verdict.

SEC. 1137. The jury by their verdict shall find as follows:

First. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be;

Second. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license or right to the possession of either, established on the trial by the defendant, if any; in effect as the same required to be pleaded.

Carter Code, sec. 305; Charlton Code, sec. 305.

Bennet *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 832). Tyee Consol. Min. Co. *v.* Langstedt (121 Fed. Rep., 709; 58 C. C. A., 129; 2 Alaska Rep., 640). Shields *v.* Mongollon Expl. Co. (137 Fed. Rep., 539; 70 C. C. A. 123; 2 Alaska Rep., 672). Steil *v.* Dessmore (3 Alaska, 398). Goldsmith *v.* Smith (21 Fed. Rep., 613). Fitch *v.* Cornell (1 Saw. Rep., 174).

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What damages may be recovered, and when the value of permanent improvements may be set off against such damages.

SEC. 1138. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value thereof at the time of trial, not exceeding such damages, shall be allowed as a set-off.

Carter Code, sec. 306; Charlton Code, sec. 306.

Kimball *v.* Miller (1 Alaska Rep., 347). Steil *v.* Dessmore (3 Alaska, 398). Wythe *v.* Myers (3 Saw. Rep., 595). Stark *v.* Star (7 Or. Rep., 500). Hetcher *v.* Briggs (6 Or. Rep., 31). Star *v.* Star (1 Saw. Rep., 15). Fitch *v.* Cornell (1 Saw. Rep., 158). Neff *v.* Penoyer (3 Saw. Rep., 496). Hicklin *v.* Marco (46 Fed. Rep., 425).

Verdict when right of possession expires after commencement of action.

SEC. 1139. If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

Carter Code, sec. 307; Charlton Code, sec. 307.

Steil *v.* Dessmore (3 Alaska Rep., 398).

Order to make survey of the property.

SEC. 1140. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

Carter Code, sec. 308; Charlton Code, sec. 308.

Steil *v.* Dessmore (3 Alaska Rep., 398).

Same subject.

SEC. 1141. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises he shall be liable therefor.

Carter Code, sec. 309; Charlton Code, sec. 309.

Steil *v.* Dessmore (3 Alaska Rep., 398).

Action not to be prejudiced by alienation of person in possession.

SEC. 1142. An action for the recovery of the possession of real property against a person in possession can not be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Carter Code, sec. 310; Charlton Code, sec. 310.

Steil *v.* Dessmore (3 Alaska Rep., 398).

Mortgagee can not maintain action against mortgagor.

SEC. 1143. A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law, and a judgment thereon.

Carter Code, sec. 311; Charlton Code, sec. 311.

Lewis *v.* Wells (85 Fed. Rep., 896; 1 Alaska Rep., 789). Nestor *v.* Holt (1 Alaska Rep., 567). Lindblom *v.* Kidston (2 Alaska Rep., 292). Steil *v.* Dessmore (3 Alaska Rep., 398). Cooke *v.* Cooper (22 Pac. Rep., 945). Roberts *v.* Sutherland (4 Or. Rep., 219). Witherell *v.* Wyberg (4 Saw. Rep., 234). Gest *v.* Packwood (34 Fed. Rep., 375). Anderson *v.* Baxter (4 Or. Rep., 110). Semple *v.* Bank of Brit. Col. (5 Saw. Rep. 88). Savings Soc. *v.* Multnomah County (169 U. S. Rep., 426). Dekum *v.* Multnomah County (63 Pac. Rep., 496). Marks *v.* La Rocque (39 Pac. Rep., 401).

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Cooper *v.* Shirley (75 Fed. Rep., 170). Thompson *v.* Shirley (69 Fed. Rep., 484). Teall *v.* Walkers (11 U. S. Rep., 251). Flannigan Estate *v.* Gt. Cent. L. Co. (77 Pac. Rep., 485). Kaston *v.* Storey (80 Pac. Rep., 217). Marquam *v.* Ross (83 Pac. Rep., 852; 86 Pac. Rep., 1210). Hamilton *v.* Holmes (87 Pac. Rep., 154). Cooper *v.* Stauber (89 Pac. Rep., 641). Wright *v.* Conservative Inv. Co. (89 Pac. Rep., 305). Lambert *v.* Howard (90 Pac. Rep., 150). Kramer *v.* Wilson (90 Pac. Rep., 183).

NOTE.—As to foreclosure of liens on real property, see chap. 42, post.

Action by tenant in common or for dower, what must be shown.

SEC. 1144. In an action for the recovery of dower before admeasurement, or by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right of possession, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Carter Code, sec. 312; Charlton Code, sec. 312.

Bechtel *v.* Bechtel (2 Alaska Rep., 397). Steil *v.* Dessmore (3 Alaska Rep., 398). Goldsmith *v.* Smith (21 Fed. Rep., 612). Grant *v.* Paddock (47 Pac. Rep., 712). McKay *v.* Freeman (6 Or. Rep., 449). Neal *v.* Davis (99 Pac. Rep., 69).

Action against lessee on failure to pay rent.

SEC. 1145. When in case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such a failure, and may bring action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before judgment in such action the lessee or his successor in interest as to the whole or a part of the property pay to the plaintiff or bring into court the amount of rent then in arrear, with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

Carter Code, sec. 313; Charlton Code, sec. 313.

Piper *v.* Cashell (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 672). Steil *v.* Dessmore (3 Alaska Rep., 398). Wolfer *v.* Hurst (82 Pac. Rep., 20).

NOTE.—For action of forcible entry and detainer see chap. 99, post.

When judgment conclusive, and upon whom.

SEC. 1146. In an action to recover the possession of real property the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given and against all persons claiming from, through, or under such party after the commencement of such action, except as in this section provided. When service of the summons is made by publication and judgment is given for want of answer at any time within two years from the entry thereof the defendant or his successor in interest as to the whole or any part of the property shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

Carter Code, sec. 314; Charlton Code, sec. 314.

Miller *v.* Blackett (47 Fed. Rep., 547; 1 Alaska Rep., 827). Steil *v.* Dessmore (3 Alaska Rep., 398). Hill *v.* Cooper (8 Or. Rep., 254). Barrell *v.* Title Guar. Co. (39 Pac. Rep., 992). Moores *v.* Moores (59 Pac. Rep., 327). Hoover *v.* King (72 Pac. Rep., 880). Coughanour *v.* Hutchinson (69 Pac. Rep., 68). Clark *v.* Hindman (79 Pac. Rep., 56). Holmes *v.* Wolfard (81 Pac. Rep., 819). Hume *v.* Burns (90 Pac. Rep., 1009).

NOTE.—See sec. 1863, chap. 99 of this title.

Possession not to be affected by order allowing new trial.

SEC. 1147. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the section last preceding, such possession shall not be thereby

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affected in any way, and if judgment be given for the defendant in the new trial he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

Carter Code, sec. 315; Charlton Code, sec. 315.

Steil *v.* Dessmore (3 Alaska Rep., 398).

Admeasurement of dower after judgment.

SEC. 1148. In an action to recover the possession of real property by a tenant in dower or his successor in interest, if such a state in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured, as follows:

First. At any time after the entry of judgment in favor of the plaintiff, he may, upon notice to the adverse party, move the court for the appointment of referees to admeasure the dower out of the real property of which the possession is recovered by the action. The court shall allow such motion unless it appear probable on the hearing that a partition of such property can not be made without prejudice to the interests of the other owners. In the latter case the court shall disallow the motion, and thereafter the plaintiff shall only proceed for partition or sale of such real property as provided in the chapter of this code entitled "Of Actions for the Partition of Real Property";

Second. If the court allow the motion, thereafter the proceedings shall be conducted as provided in such chapter. At any time after the confirmation of the report of the referees the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement thereof, and for the damages recovered, if any, for withholding the same, if such damages remain unsatisfied;

Third. If the motion for admeasurement be made at the term at which judgment was given, the notice thereof shall be served on the adverse party at such time as the court by general rule or special order may prescribe.

Carter Code, sec. 316; Charlton Code, sec. 316.

Bechtel *v.* Bechtel (2 Alaska Rep., 397). Steil *v.* Dessmore (3 Alaska Rep., 398). Baer *v.* Ballingall (61 Pac. Rep., 852). Hanlee *v.* Kubli (74 Pac. Rep., 224). Neal *v.* David (99 Pac. Rep., 69).

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# CHAPTER THIRTY-THREE.

## OF ACTIONS FOR NUISANCE, WASTE, AND TRESPASS ON REAL PROPERTY.


Sec.
1149. Private nuisance, and action therefor; when warrant allowed to abate it.
1150. How warrant issued, and mode of proceeding under.
1151. When defendant may have stay of warrant.
1152. Sureties in undertaking, when to justify.
1153. Action for waste, and judgment therein.
1154. Actions for trespass in particular cases, and of judgment therein.
1155. Same subject.


June 6, 1900.

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R. S., 2d Supp., pp. 1259-1260.

Private nuisance, and action therefor; when warrant allowed to abate it.

SEC. 1149. Any person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages therefor. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the marshal to abate such nuisance. Such motion must be made at the term at which judgment is given, and

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shall be allowed of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined.

Carter Code, sec. 317; Charlton Code, sec. 317.

Linderberg *v.* Doverspike (2 Alaska Rep., 177). Heine *v.* Roth (2 Alaska Rep., 416). Conrad *v.* Miller (2 Alaska Rep., 433).

*Nuisances*: Rosenberg *v.* Abraham (8 Or. Rep., 509). Turner *v.* Locy (61 Pac. Rep., 342). Fleischner *v.* Cit. Inv. Co. (35 Pac. Rep., 174). Blagen *v.* Smith (56 Pac. Rep., 292). Kothenberthal *v.* Salem (11 Pac. Rep., 287). Marsh *v.* Trullinger (6 Or. Rep., 356). Ankene *v.* Fairview Mill. Co. (10 Or. Rep., 396). City of Portland *v.* Cook (87 Pac. Rep., 772).

*Equity*: Parrish *v.* Stevens (1 Or. Rep., 73). Luhrs *v.* Sturtevant (10 Or. Rep., 170). Esson *v.* Wattier (34 Pac. Rep., 756). Blagen *v.* Smith (56 Pac. Rep., 292).

*Landlord and tenant*: Fleischner *v.* City Inv. Co. (35 Pac. Rep., 174).

*Particular cases*: Blagen *v.* Smith (56 Pac. Rep., 292). Luhrs *v.* Sturtevant (10 Or. Rep., 170). Waltz *v.* Foster (7 Pac. Rep., 24). Essen *v.* Wattier (34 Pac. Rep., 756). Turner *v.* Locy (61 Pac. Rep., 342). City of Portland *v.* Cook (87 Pac. Rep., 772). Wolfard *v.* Fisher (87 Pac. Rep., 530). State *v.* Ayres (88 Pac. Rep., 653).

How warrant issued, and mode of proceeding under.

SEC. 1150. If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the marshal, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expense of abating the nuisance may be levied by the marshal on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

Carter Code, sec. 318; Charlton Code, sec. 318.

When defendant may have stay of warrant.

SEC. 1151. At any time before the order is made, or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, and to allow the defendant to abate the nuisance himself, upon his giving an undertaking to the plaintiff in a sufficient amount, with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order.

Carter Code, sec. 319; Charlton Code, sec. 319.

Blagen *v.* Smith (56 Pac. Rep., 292).

Sureties in undertaking, when to justify.

SEC. 1152. If the plaintiff is not notified of the time and place of the application for the order provided for in section eleven hundred and fifty-one, the sureties therein provided for shall justify as bail upon arrest, otherwise such justification may be omitted, unless the plaintiff require it. If such order be made and undertaking given, and the defendant fails to abate such nuisance within the time specified in said order, thereafter, at any time within six months, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

Carter Code, sec. 320; Charlton Code, sec. 320.

Action for waste, and judgment thereon.

SEC. 1153. If a guardian, tenant in severalty or in common for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action for damages therefor against such guardian or tenant, in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion is determined in the action to be

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equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

Carter Code, sec. 321; Charlton Code, sec. 321.

Powell *v.* Dayton S. & G. R. R. Co. (16 Pac. Rep., 863). Davenport *v.* Magoon (4 Pac. Rep., 299). Sherridan *v.* McMullen (6 Pac. Rep., 497). Beaver F. & L. Co. *v.* Eccles (73 Pac. Rep., 201).

Actions for trespass in particular cases, and of judgment thereon.

SEC. 1154. Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of any village, town, or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town, or city against the person committing such trespasses, or any of them, if judgment be given for the plaintiff it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

Carter Code, sec. 322; Charlton Code, sec. 322.

McQuillan *v.* Tanana Elec Co. (3 Alaska Rep., 110, 119, 120). "In this case plaintiff was the locator and owner of a valid placer mining claim. Defendant trespassed upon the claim, and cut and carried away timber therefrom; plaintiff sued for treble damages under sec. 1154 of this code. Upon demurrer, the court held, that a qualified locator and owner of a valid placer mining claim may recover treble damages, under said section, from a wanton trespasser who wilfully cuts and removes timber from the mining claim."

Neff *v.* Penoyer (3 Saw. Rep., 495). Loewenberg *v.* Rosenthal (22 Pac. Rep., 601). Oregon & Calif R. Co. *v.* Jackson (28 Pac. Rep., 74). Roots *v.* Boring Jct. Lbr. Co. (92 Pac. Rep., 811).

Same subject.

SEC. 1155. If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

Carter Code, sec. 323; Charlton Code, sec. 323.

McQuillan *v.* Tanana Elec. Co. (3 Alaska Rep., 112).

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# CHAPTER THIRTY-FOUR.

## ACTIONS ON OFFICIAL UNDERTAKINGS, AND FOR FINES AND FORFEITURES.

Sec.
1156. Official undertakings, to whom deemed a security.
1157. Who may maintain action thereon.
1158. When leave must be obtained before action can be commenced.
1159. Judgment no bar to action for another delinquency.
1160. Amount of judgment.
1161. Who may maintain action for fines and forfeitures.
1162. Actions for penalties not to exceed certain amount.
1163. Judgment by collusion between plaintiff and defendant.
1164. Disposition of fines and forfeitures.

June 6, 1900.
31 Stat. L., 387–388.
R. S., 2d Supp., pp. 1261–1262.

Official undertakings, to whom deemed a security.

SEC. 1156. The official undertaking or other security of a public officer to any county, city, town, or other municipal or public corporation of like character therein, shall be deemed a security to the United States or to such city, town, or other municipal or public corporation,

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as the case may be, and also to all persons severally for the official delinquency against which it is intended to provide.

Carter Code, sec. 324; Charlton Code, sec. 324.

Mitchell *v.* Galen (1 Alaska Rep., 339). In re Ison (6 Or. Rep., 470). Howe *v.* Taylor (6 Or. Rep., 284). Baker County *v.* Huntington (79 Pac. Rep., 187; 87 Pac. Rep., 1036). Feller *v.* Gates (67 Pac. Rep., 416). State *v.* Davis (71 Pac. Rep., 68; 72 Pac. Rep., 317); Lake County *v.* Neilon (74 Pac. Rep., 212).

Who may maintain action thereon.

SEC. 1157. When a public officer, by official misconduct or neglect of duty, shall forfeit his official undertaking or other security, or render his sureties therein liable upon such undertaking or other security, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

Carter Code, sec. 325; Charlton Code, sec. 325.

Habershan *v.* Sears (5 Pac. Rep., 208). Moore *v.* Floyd (4 Or. Rep. 101). Crook County *v.* Bushnell (13 Pac. Rep., 886). In re Ison (6 Or. Rep., 470). Hume *v.* Kelly (43 Pac. Rep., 380). State *v.* Davis (71 Pac. Rep., 68; 72 Pac. Rep., 317).

When leave must be obtained before action can be commenced.

SEC. 1158. Before such action can be commenced by a plaintiff other than the United States, or the municipal or public corporation named in the undertaking or other security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or other security and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matters set forth in the affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant on motion shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor judgment may be given accordingly.

Carter Code, sec. 326; Charlton Code, sec. 326.

Crook County *v.* Bushnell (13 Pac. Rep., 886). Hume *v.* Kelly (43 Pac. Rep., 380). Howe *v.* Taylor (6 Or. Rep., 290). Multnomah County *v.* Kelly (60 Pac. Rep., 202).

Judgment no bar to action for another delinquency.

SEC. 1159. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking, or other security, for another delinquency.

Carter Code, sec. 327; Charlton Code, sec. 327

Hume *v.* Kelly (43 Pac. Rep., 380).

Amount of judgment.

SEC. 1160. In an action upon an official undertaking or other security, if judgment has already been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such undertaking or other security, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

Carter Code, sec. 328; Charlton Code, sec. 328.

Baker County *v.* Huntington (87 Pac. Rep., 1036).

Who may maintain action for fines and forfeitures.

SEC. 1161. Fines and forfeitures may be recovered by an action in the name of the officer or person to whom they are by law given, or

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in the name of the officer or person who by law is authorized to prosecute for them.

Carter Code, sec. 329; Charlton Code, sec. 329.

Hanna *v.* Wells (4 Or. Rep., 249). In re Ison (6 Or. Rep., 471). Holladay *v.* Holladay (11 Pac. Rep., 260; 12 Pac. Rep., 821). Myers *v.* Dillon (66 Pac. Rep., 814).

Actions for penalties not to exceed certain amount.

SEC. 1162. When an action shall be commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

Carter Code, sec. 330; Charlton Code, sec. 330.

Judgment by collusion between plaintiff and defendant.

SEC. 1163. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or forfeiture is given, wholly or partly, to the person who prosecutes, shall not bar the recovery of the same by another person.

Carter Code, sec. 331; Charlton Code, sec. 331.

Disposition of fines and forfeitures.

SEC. 1164. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid to the clerk of the district court. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the United States, or to any officer for its use, the action for the recovery of such property may be commenced wherever the defendant may be found, or wherever such property may be.

Carter Code, sec. 332; Charlton Code, sec. 332.

Metschan *v.* Grant County (58 Pac. Rep., 526). Malheur County *v.* Carter (98 Pac. Rep., 489).

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# CHAPTER THIRTY-FIVE.

## ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

Sec.
1165. How actions may be maintained by public corporations, and for what causes.
1166. Actions against public corporations and what causes.
1167. How pleadings of public corporations verified.
1168. How judgment against public corporation satisfied.

June 6, 1900.
31 Stat. L., 388–389.
R. S., 2d Supp., pp. 1262–1263.
How actions may be maintained by public corporations, and for what causes.

SEC. 1165. An action may be maintained by any incorporated town, school district, or other public corporation of like character in the district in its corporate name, and upon a cause of action accruing to it in its corporate character, and not otherwise, in either of the following cases:

First. Upon a contract made with such public corporation;

Second. Upon a liability prescribed by law in favor of such public corporation;

Third. To recover a penalty or forfeiture given to such public corporation;

Fourth. To recover damages for an injury to the corporate rights or property of such public corporation.

Carter Code, sec. 333; Charlton Code, sec. 333.

Town of Nome *v.* Lang (1 Alaska Rep., 593). Nome-Sinook Min. Co. *v.* Sampson (1 Alaska Rep., 578). Grant County *v.* Sels (5 Or. Rep., 247). Grant County *v.* Lake County (21 Pac. Rep., 447). City of Portland *v.* Or. R. E. Co. (72 Pac. Rep., 322).

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Actions against public corporations, and for what causes.

SEC. 1166. An action may be maintained against any of the public corporations in the district mentioned in the last preceding section in its corporate character, and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such public corporation.

Carter Code, sec. 334; Charlton Code, sec. 334.

School Board *v.* Common Council (2 Alaska Rep., 351). Krause *v.* Town of Juneau (2 Alaska Rep., 636). McCalla *v.* Multnomah County (3 Or. Rep., 424). Sheridan *v.* Salem (12 Pac Rep., 925). Ford *v.* Umatilla County (16 Pac. Rep., 33). Rankin *v.* Buckman (9 Or. Rep., 258). Templeton *v.* Lynn County (29 Pac. Rep., 795). Eastman *v.* Klackamas County (32 Fed. Rep., 32). Pruden *v.* Grant County (7 Pac. Rep., 308). Crossen *v.* Wasco County (8 Or. Rep., 113). Grant County *v.* Lake County (21 Pac. Rep., 447). State *v.* Baker County (33 Pac. Rep., 530). Metschan *v.* Grant County (58 Pac. Rep., 80). Goldsmith *v.* Baker City (49 Pac. Rep., 973). Wagner *v.* Portland (67 Pac. Rep., 300). Gaston *v.* City of Portland (69 Pac. Rep., 445). Keene *v.* Smith (75 Pac. Rep., 1065). Schooling *v.* City of Harrisburg (71 Pac. Rep., 603). Venable *v.* Board of Police Commr., etc. (67 Pac. Rep., 203). Trotter *v.* Town of Stayton (77 Pac. Rep., 395). Rice *v.* Wallowa County (81 Pac. Rep., 358). Batdorff *v.* Oregon City (100 Pac. Rep., 937).

How pleadings of public corporations are verified.

SEC. 1167. In such actions the pleadings of the public corporation shall be verified by the chief officer representing it in its corporate capacity or by such other officer, agent, or attorney as he may designate, in the same manner as if such officer were a defendant in the action.

Carter Code, sec. 335; Charlton Code, sec. 335.

NOTE.—See sec. 903, chap. 10, of this title.

How judgment against public corporations satisfied.

SEC. 1168. If judgment be given for the recovery of money or damages against a public corporation, no execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

First. The party in whose favor such judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the record thereof to the officer of such public corporation who is authorized to draw orders on the treasurer thereof;

Second. On the presentation of such transcript, such officer shall draw an order on such treasurer for the amount of the judgment in favor of the party for whom the same was given. Thereafter such order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of such public corporation;

Third. The certified transcript herein provided for shall not be furnished by the clerk, unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum no order upon the treasurer shall issue thereon.

Carter Code, sec. 336; Charlton Code, sec. 336.

Goldsmith *v.* Baker City (49 Pac. Rep., 973). Hamilton *v.* Gambell (48 Pac. Rep., 433). Brauer *v.* Portland (60 Pac. Rep., 379).

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# CHAPTER THIRTY-SIX.

## OF ACTIONS TO AVOID CHARTERS, LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE AND TO DETERMINE THE RIGHT THERETO.

Sec.
1169. Scire facias and quo warranto abolished.
1170. Action against public or private corporation to be commenced on the direction of the governor.
1171. Action to annul the existence of corporation.
1172. Action for the usurpation of office or franchise.
1173. Who to prosecute actions, pleadings by whom verified, how leave granted, and who deemed coplaintiff.
1174. Duty of prosecuting attorney as to commencing action.
1175. When relator's right may be pleaded and determined in the action.
1176. If judgment be given in favor of relator what he may do.
1177. Relator after judgment may have action for damages.
1178. Actions against several persons claiming office or franchise.
1179. Judgment against usurper. Court may fine him.
1180. Judgment against corporation.
1181. Copy of judgment roll to be filed.
1182. How judgment enforced.

June 6, 1900.
31 Stat. L., 389-391.
R. S., 2d Supp., pp. 1263-1265.

Scire facias and quo warranto abolished.

SEC. 1169. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by an action in the mode prescribed in this chapter.

Carter Code, sec. 337; Charlton Code, sec. 337.

State *v.* Douglas County Road Commr. (10 Or. Rep., 199). Wilson *v.* Shively (10 Or. Rep., 273).

Action against public or private corporation to be commenced on the direction of the governor.

SEC. 1170. An action may be maintained in the name of the United States, whenever the governor shall so direct, against a corporation either public or private, for the purpose of avoiding the act of incorporation, or the act renewing or modifying its corporate existence, on the ground that such act or either of them was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of such corporation, when the same has been formed under any general law operating in this district therefor, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

Carter Code, sec. 338; Charlton Code, sec. 338.

Alaska Gold Min. Co. *v.* Ebner (2 Alaska Rep., 615).

Action to annul the existence of corporation.

SEC. 1171. An action may be maintained in the name of the United States against a corporation other than a public one on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall—

First. Offend against any of the provisions of the acts, or either of them, creating, renewing, or modifying such corporation or the provisions of any general law under which it became incorporated; or,

Second. Violate the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third. Whenever it has forfeited its privileges or franchises by failure to exercise for a period of one year its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.



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Sixth. Whenever any such corporation or association of persons shall combine for the purpose of forming a trust or agreement to prevent competition or to control the price, production or sale of any goods, products, or merchandise.

Carter Code, sec. 339; Charlton Code, sec. 339.

State *v.* Or. Cent. R. Co. (2 Or. Rep., 255). State *v.* Douglas County Road Commr. (10 Or. Rep., 201). Leavengood *v.* McGee (91 Pac. Rep., 453).

Action for the usurpation of office or franchise.

SEC. 1172. An action may be maintained in the name of the United States upon the information of the United States attorney or upon the relation of a private party against the person offending in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within the District, or any office in a corporation, either public or private, created or formed by or under the authority of the District; or,

Second. When any public officer has done or suffered an act which, by the provisions of law, makes a forfeiture of his office; or,

Third. When any association or number of persons act within the district as a corporation without being duly incorporated.

Carter Code, sec. 340; Charlton Code, sec. 340.

McAllister *v.* U. S. (141 U. S. Rep., 174; 1 Alaska Rep., 828). Monahan *v.* Lynch (2 Alaska Rep., 134). Everding *v.* McGinn (25 Pac. Rep., 178). Selby *v.* City of Portland (12 Pac. Rep., 377). State *v.* McKinnon (8 Or. Rep., 493). Robertson *v.* Groves (4 Or. Rep., 214). State *v.* Colving (13 Pac. Rep., 639). Stevens *v.* Carter (40 Pac. Rep., 1074).

*Pleading*: State *v.* Church (5 Or. Rep., 375). State *v.* Stevens (44 Pac. Rep., 898). State *v.* Lord (43 Pac. Rep., 471). State *v.* Cook (65 Pac. Rep., 89).

Who to prosecute actions, pleadings by whom verified, how leave granted, and who deemed coplaintiff.

SEC. 1173. The actions provided for in this chapter shall be commenced and prosecuted by the United States attorney. When the action is upon the relation of a private party, as allowed in section eleven hundred and seventy-two, the pleadings on behalf of the district shall be verified by such relator as if he were the plaintiff in the action, or otherwise as provided in section nine hundred and three; in all other cases such pleading shall be verified by the attorney in like manner, or otherwise as provided in such section. When an action can only be commenced by leave, as provided in section eleven hundred and seventy-one, such leave shall be granted when it appears by affidavit that the acts or omissions in such section specified have been done or suffered by such corporation. When an action is commenced on the information of a private person, as allowed in section eleven hundred and seventy-two, having an interest in the question, such party, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff.

Carter Code, sec. 341; Charlton Code, 341.

Duty of prosecuting attorney as to commencing action.

SEC. 1174. When directed by the governor, as prescribed in section eleven hundred and seventy, it shall be the duty of the prosecuting attorney to commence the action therein provided for accordingly. In all other actions provided for in this chapter it shall be his duty to commence such action upon leave given where leave is required in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the district to indemnify it against the costs and expenses that may be incurred thereby.

Carter Code, sec. 342; Charlton Code, sec. 342.

When relator's right may be pleaded and determined in the action.

SEC. 1175. Whenever an action is brought against a person for any of the causes specified in subdivision one of section eleven hundred and seventy-two, the United States attorney, in addition to the state-

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ment of the cause of action, may also separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his rights thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant as justice may require.

Carter Code, sec. 343; Charlton Code, sec. 343.

If judgment be given in favor of relator what he may do.

SEC. 1176. If judgment be given upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to the possession and enjoyment of such franchise, or to take upon himself the execution of such office, after qualifying himself therefor as required by law, and to demand and receive the possession of all the books, papers, and property of whatever nature belonging thereto.

Carter Code, sec. 344; Charlton Code, sec. 344.

Relator after judgment may have action for damages.

SEC. 1177. If judgment be given upon the right and in favor of the person so alleged to be entitled, he may afterwards maintain an action to recover the damages which he may have sustained by reason of the premises. In such action the defendant may be arrested and held to bail in the same manner and with the like effect as in other actions where the defendant is subject to arrest.

Carter Code, sec. 345; Charlton Code, sec. 345.

Actions against several persons claiming office or franchise.

SEC. 1178. Several persons may be joined as defendants in an action for the causes specified in subdivision one of section eleven hundred and seventy-two, and in such action their respective rights to such office or franchise may be determined.

Carter Code, sec. 346; Charlton Code, 346.

Judgment against usurper. Court may fine him.

SEC. 1179. When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in subdivision one of section eleven hundred and seventy-two, is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also in its discretion impose a fine upon the defendant not exceeding two thousand dollars.

Carter Code, sec. 347; Charlton Code, sec. 347.

Judgment against corporation.

SEC. 1180. If it be determined that a corporation against which an action has been commenced pursuant to this chapter has forfeited its corporate rights, privileges, and franchises, judgment shall be given that such corporation be excluded therefrom, and that the corporation be dissolved.

Carter Code, 348; Charlton Code, sec. 348.

Copy of judgment roll to be filed.

SEC. 1181. If judgment be given against a corporation the effect of which is that such corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the United States attorney to cause a copy of the judgment roll to be filed with the officer issuing the certificate of corporation or the letters patent to such corporation.

Carter Code, sec. 349; Charlton Code, sec. 349.

How judgment enforced.

SEC. 1182. A judgment given in any action provided for in this chapter in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or, if the defendant be a corporation, the body of any or all of the officers or members of such corporation refusing or neglecting obedience thereto.

Carter Code, sec. 350; Charlton Code, sec. 350.

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# CHAPTER THIRTY-SEVEN.

## OF ACTIONS BY AND AGAINST EXECUTORS OR ADMINISTRATORS.


Sec.
1183. What causes of action do not survive.
1184. What causes of action do survive.
1185. When a death ensues from an injury.
1186. Representatives regarded as one person.
1187. When judgment for want of answer is evidence of assets.
1188. Effect of inventory as evidence, and how it may be contradicted or avoided.
1189. Executor of his own wrong not liable as such.
1190. When action may be commenced against executor or administrator.
1191. Claim must be presented before action can be commenced.
1192. When provisional remedies allowed against executors or administrators.


June 6, 1900.

31 Stat. L., 391–393.
R. S., 2d Supp., 1265–1267.

What causes of action do not survive.

SEC. 1183. A cause of action arising out of an injury to the person dies with the person of either party, except as provided in section eleven hundred and eighty-five, but the provisions of this chapter shall not be construed so as to abate the action mentioned in section eight hundred and sixty-eight, or to defeat or prejudice the right of action given by section eight hundred and sixty-three.

Carter Code, sec. 351; Charlton Code, sec. 351.

Kohn *v.* McKinnon (90 Fed. Rep., 623; 1 Alaska Rep., 736). Fox, Adminr. *v.* McKay (1 Alaska Rep., 329). Schleiger *v.* Nor. Termin. Co. (72 Pac. Rep., 324). Olston *v.* Or. W. P. & R. Co. (96 Pac. Rep., 1095). Stivers *v.* Byrkett (108 Pac. Rep., 1019).

NOTE.—As to this and the two following sections see sec. 1276, chap. 44, post.

What causes of action do survive.

SEC. 1184. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives.

Carter Code, sec. 352; Charlton Code, sec. 352.

Barker *v.* Ladd (3 Saw. Rep., 144). Burrell *v.* Kern (56 Pac. Rep., 809). Stivers *v.* Byrkett (108 Pac. Rep., 1014).

NOTE.—As to when pending actions do not abate by death see sec. 867, chap. 3, ante.

When a death ensues from an injury.

SEC. 1185. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for an injury done by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed ten thousand dollars, and the amount recovered, if any, shall be exclusively for the benefit of the decedent's husband or wife and children when he or she leaves a husband, wife, or children, him or her surviving; and when any sum is collected it must be distributed by the plaintiff as if it were unbequeathed assets left in his hands, after payment of all debts and expenses of administration, and when he or she leaves no husband, wife, or children, him or her surviving, the amount recovered shall be administered as other personal property of the deceased person; but the plaintiff may deduct there-

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from the expenses of the action, to be allowed by the proper court upon notice, to be given in such manner and to such persons as the court deems proper.

Carter Code, sec. 353; Charlton Code, sec. 353.

Linge's Admnr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 12). "In this case in a suit for wrongful death through negligence, the jury returned a verdict for $10,000. Held, under above section, the verdict not to be excessive."

Allen *v.* Knight's Island Consol Copper Co. (3 Alaska Rep., 651). The *Boverie* (167 Fed. Rep., 520; 93 C. C. A., 156). Johnson *v.* The steamship *Zelandia* (3 Alaska Rep., 662). NW. SS. Co. *v.* Griggs (146 Fed. Rep., 472; 77 C. C. A., 28). Alaska Treadwell G. M. Co. *v.* Cheney (162 Fed. Rep., 593; 89 C. C. A., 351).

*Generally*: Seward *v.* Vera Cruz (10 App. Cases, 59). Pym *v.* R. R. Co. (4 B. & S., 403). The *Oregon* (73 Fed. Rep., 849). The *Corsair* (145 U. S. Rep., 335). The *Harrisburg* (119 U. S. Rep., 199). Jennings *v.* Alaska Treadwell G. M. Co. (170 Fed. Rep., 146; 95 C. C. A., 388). Putnam *v.* S. P. Co. (27 Pac. Rep., 1033). Craft *v.* N. P. Co. (35 Pac. Rep., 250). Carlson *v.* Or. S. L. R. Co. (28 Pac. Rep., 497). Perham *v.* Portland El. Co. (54 Pac. Rep., 14). Holmes *v.* Or. & Calif. R. Co. (5 Fed. Rep., 80; 9 Fed. Rep., 246). The *Clatsop Chief* (8 Fed. Rep., 167). Schleiger *v.* North. Term. Co. (72 Pac. Rep., 324). Olston *v.* Or. W. P. & R. Co. (96 Pac. Rep., 1095).

NOTE.—See sec. 863, chap. 3, ante, as to who may prosecute action for injury or death of child, etc.

*Measure of damages*: Carlson *v.* Or. S. L. R. Co. (28 Pac. Rep., 497). Holmes *v.* Or. & Calif. R. Co. (5 Fed. Rep., 75, and 542). Holland *v.* Brown (35 Pac. Rep., 48). Ladd *v.* Foster (31 Fed. Rep., 832). Jennings *v.* Alaska Treadwell G. M. Co. (170 Fed. Rep., 146; 95 C. C. A., 388).

Representatives regarded as one person.

SEC. 1186. In an action against several executors or administrators they shall all be considered as one person, representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons be served only on part of them, in the same manner and with the like effect as if served on all, except as provided in the next section.

Carter Code, sec. 354; Charlton Code, sec. 354.

When judgment for want of answer is evidence of assets.

SEC. 1187. When a judgment is given against an executor or administrator for want of an answer such judgment is not to be deemed evidence of assets in his hands unless it appear that the complaint alleged assets and that the summons was served upon him.

Carter Code, sec. 355; Charlton Code, sec. 355.

Effect of inventory as evidence, and how it may be contradicted or avoided.

SEC. 1188. In an action against executors or administrators in which the fact of their having administered the estate of their testator or intestate or any part thereof is put in issue and the inventory of the property of the deceased returned by them is given in evidence the same may be contradicted or avoided by evidence—

First. That any property has been omitted in such inventory or was not returned therein at its full value or that since the return thereof such property has increased in value.

Second. That such property has perished or been lost without the fault of such executors or administrators or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants can not be charged for any things in action specified in their inventory unless it appear that they have been collected or with due diligence might have been.

Carter Code, sec. 356; Charlton Code, sec. 356.

In re Conser's Estate (66 Pac. Rep., 607).

Executor of his own wrong not liable as such.

SEC. 1189. No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or adminis-

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trators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

Carter Code, sec. 357; Charlton Code, sec. 357.

Rutherford *v.* Thompson (12 Pac. Rep., 382). Oh Chaw *v.* Brockway (28 Pac. Rep., 384). State *v.* Henkle (78 Pac. Rep., 325). Springer *v.* Jenkins (84 Pac. Rep., 479).

When action may be commenced against executor or administrator.

SEC. 1190. An action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters testamentary or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise.

Carter Code, sec. 358; Charlton Code, sec. 358.

Wells *v.* Applegate (10 Or. Rep., 59). Teel *v.* Winston (29 Pac. Rep., 142). Aiken *v.* Coolidge (6 Pac. Rep., 712). Pruitt *v.* Muldrick (65 Pac. Rep., 20). Blaskower *v.* Steele (31 Pac. Rep., 252). Zachary *v.* Chambers (1 Or. Rep., 321). In re Morgan's Estate (77 Pac. Rep., 608).

NOTE.—As to summary method of adjudication of rejected claim, see sec. 1655, chap. 84 of this title.

Claim must be presented before action can be commenced.

SEC. 1191. Such action shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator and by him disallowed. If such claim is presented after the expiration of the period of six months mentioned in sections sixteen hundred and fifty-two and sixteen hundred and fifty-three, the executor or administrator in an action therefor shall only be liable to the extent of the assets in his hands at the time the summons is served upon him.

Carter Code, sec. 359; Charlton Code, sec. 359.

In re estate of M. O. Gladough (1 Alaska Rep., 649). Goltra *v.* Penland (69 Pac. Rep., 925).

When provisional remedies allowed against executors or administrators.

SEC. 1192. In an action against an executor or administrator as such the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator such remedies shall be allowed for the same causes and in like manner and with like effect as in actions generally.

Carter Code, sec. 360; Charlton Code, sec. 360.

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# CHAPTER THIRTY-EIGHT.

## GENERAL PROVISIONS RELATING TO ACTIONS OF AN EQUITABLE NATURE.


Sec.
1193. Limitation of actions.
1194. In whose name an action to be prosecuted.
1195. Plaintiffs and defendants, who may be.
1196. Same subject.
1197. Service of the summons.
1198. Service of the summons by publication.
1199. What objections if not taken by demurrer or answer may be made on the trial.
1200. Counterclaim of defendant.
1201. What causes of actions may be united.
1202. Arrest and bail in actions of equitable nature.


June 6, 1900.
31 Stat. L., 393–394.
R. S., 2d Supp., pp. 1267–1268.
Limitation of actions.

SEC. 1193. An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in chapter two of this title; and an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the

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possession of real property; but no action shall be maintained to set aside, cancel, annul, or otherwise affect a patent to lands issued by the United States, or to compel any person claiming or holding under such patent to convey the lands described therein or any portion of them to the plaintiff in such action, or to hold the same in trust for or to the use and benefit of such plaintiff, or on acount of any matter, thing, or transaction which was had, done, suffered, or transpired prior to the date of such patent, unless such action is commenced within ten years from the date of such patent. In an action upon a new promise, fraud, or mistake the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake: *Provided*, This section shall not be construed so as to bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action or set up by complaint to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by complaint for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred by the provisions of chapter two of this title. —construction, etc.

Carter Code, sec. 361; Charlton Code, sec. 361.

Pacific Coast Co. *v.* Brown (2 Alaska Rep., 623). Marks *v.* Gates (154 Fed. Rep., 481).

*Generally*: Hall *v.* Russell (3 Saw. Rep., 514). Springer *v.* Young (12 Pac. Rep., 400). Raymond *v.* Flavel (40 Pac. Rep., 158). Howe *v.* Taylor (6 Or. Rep., 293). Neppach *v.* Jones (26 Pac. Rep., 569). Loomis *v.* Rosenthal (57 Pac. Rep., 55). Sedlak *v.* Sedlak (13 Pac. Rep., 452). Herron *v.* Eagle Min. Co. (61 Pac. Rep., 417). Anderson *v.* Baxter (4 Or. Rep., 110). Hill *v.* Cooper (6 Or. Rep., 182). Spaur *v.* McBee (23 Pac. Rep., 518). In re Morgan's Estate (77 Pac. Rep., 608). Zenske *v.* Zenske (103 Pac. Rep., 648).

*Affecting public lands*: Baker *v.* Woodward (6 Pac. Rep., 173). Hall *v.* Russell (3 Saw. Rep., 516). State *v.* Warner Valley Stock Co. (106 Pac. Rep., 781). State *v.* Warner Valley Stock Co. (108 Pac. Rep., 861).

SEC. 1194. Every action of an equitable nature shall be prosecuted in the name of the real party in interest, except as in this section otherwise provided. An executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom and in whose name a contract is made for the benefit of another. In whose name an action to be prosecuted.

Carter Code, sec. 362; Charlton Code, sec. 362.

Burness *v.* Multnomah County (60 Pac. Rep., 1005). Brownfield *v.* Houser (49 Pac. Rep., 843). Sherman *v.* Bellows (34 Pac. Rep., 549). State *v.* Penoyer (37 Pac. Rep., 906; 25 L. R. A., 862). State *v.* Lord (43 Pac. Rep., 471). Firemen's Fund Ins. Co. *v.* O. R. & N. Co. (76 Pac. Rep., 1075). North Com. Co. *v.* Lindblom (162 Fed. Rep., 250). Stewart *v.* Templeton (104 Pac. Rep., 978). Pierce *v.* Sutherland (164 Fed. Rep., 609).

NOTE.—As to real party in interest, see sec. 857, chap. 3, of this title.

SEC. 1195. All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy Plaintiffs and defendants, who may be.

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adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

Carter Code, sec. 363; Charlton Code, sec. 363.

Weiss *v.* Bethel (8 Or. Rep., 527). Stingle *v.* Nevel (9 Or. Rep., 65). State *v.* Metschan (46 Pac. Rep., 791). Beasley *v.* Shively (26 Pac. Rep., 846). Elliott *v.* Bloyd (67 Pac. Rep., 202). Hough *v.* Porter (95 Pac. Rep., 732). Stewart *v.* Templeton (104 Pac. Rep., 978).

NOTE.—As to bringing in new parties, see sec. 872, chap. 3, of this title.

Same subject.

SEC. 1196. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Carter Code, sec. 364; Charlton Code, sec. 364.

State Ins. Co. *v.* O. R. & N. Co. (26 Pac. Rep., 838). Liggett *v.* Ladd (21 Pac. Rep., 133). Trustees *v.* Adams (4 Or. Rep., 88). Tobin *v.* Portland Flour Mill Co. (68 Pac. Rep., 743). Stewart *v.* Templeton (104 Pac. Rep., 978).

Service of the summons.

SEC. 1197. When there is more than one defendant in the action, service of only one copy of the complaint shall be required, the same to be served on the defendant designated by the plaintiff or his attorney by a direction indorsed on such summons, but the summons served on the other defendants shall contain a brief statement of the cause of action and relief demanded.

Carter Code, sec. 365; Charlton Code, sec. 365.

Ankene *v.* Blackiston (7 Or. Rep., 413).

Service of the summons by publication.

SEC. 1198. In addition to the causes enumerated in the subdivisions of section eight hundred and seventy-nine, service of the summons may be made by publication in the following cases:

First. When the subject of the action is real or personal property in the District, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein;

Second. When the action is for divorce, as hereinafter provided.

Carter Code, sec. 366; Charlton Code, sec. 366.

Kieffer *v.* Victor Land Co. (98 Pac. Rep., 877).

What objections if not taken by demurrer or answer may be made on the trial.

SEC. 1199. The objection to the jurisdiction of the court, or that the complaint does not state facts sufficient to constitute a cause of action, if not taken by demurrer or answer, may be made on the trial.

Carter Code, sec. 367; Charlton Code, sec 367.

NOTE.—In Valentine *v.* Roberts (1 Alaska Rep., 536 and 540) is quoted sec. 367 of the Code of Civil Procedure (this sec. 1199). This is a mistake and ought to be sec. 367 of the Civil Code (Carter), sec. 796 of the Civil Code, Title XII.

Kitcherside *v.* Myers (10 Or. Rep., 21). O'Hara *v.* Parker (39 Pac. Rep., 1004). State *v.* Blize (61 Pac. Rep., 735). Moore *v.* Shofner (67 Pac. Rep., 511).

NOTE.—As to similar objections in actions at law see sec. 894, chap. 7, ante.

Counterclaim of defendant.

SEC. 1200. The counterclaim of the defendant shall be one upon which an action might be maintained by the defendant against the plaintiff in the action; and in addition to the cases specified in the

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subdivisions of section eight hundred and ninety-six, it is sufficient if it be connected with the subject of the action.

Carter Code, sec. 368; Charlton Code, sec. 368.

*Counter claim in equity*: Dove *v.* Hayden (5 Or. Rep., 501). Sears *v.* Martin (29 Pac. Rep., 890). Burrage *v.* Bonanza G. Min. Co. (6 Pac. Rep., 766). Conn. *v.* Conn. (30 Pac. Rep., 230). Mizer *v.* O'Shea (62 Pac. Rep., 491). Dodd *v.* Dodd (13 Pac. Rep., 509). Le Clare *v.* Thibault (69 Pac. Rep., 552). Merrill *v.* Hexter (94 Pac. Rep., 972).

*Effect of dismissing complaint*: Maffett *v.* Thompson (52 Pac. Rep., 565).

What causes of actions may be united.

SEC. 1201. The plaintiff in an action of an equitable nature may unite several causes of action in the same complaint, where they all arise out of—

First. The same transaction, or transactions connected with the same subject of action;

Second. Contract, express or implied; or,

Third. Injuries, with or without force, to property;

Fourth. Claims to real property, or any interest therein, with or without an account for the rents and profits thereof;

Fifth. Claims to personal property, or any interest therein, with or without an account for the use thereof;

Sixth. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one of these classes, and must affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Carter Code, sec. 369; Charlton Code, sec. 369.

Bruce *v.* Murray (123 Fed. Rep., 366; 59 C. C. A., 494; 2 Alaska Rep., 637). Powell *v.* Dayton S. & G. R. R. Co. (11 Pac. Rep., 222).

NOTE.—As to joinder of causes of action at law, see sec. 916, chap. 10, ante.

Arrest and bail in actions of equitable nature.

SEC. 1202. The writ of ne exeat is abolished, and instead thereof the plaintiff in an action may have the defendant arrested and held to bail in like manner and with like effect as provided in the chapter of this title "Of arrest and bail." A cause of arrest in an action shall be the same as those specified in section nine hundred and thirty-one, so far as the same may exist, and not otherwise.

Carter Code, sec. 370; Charlton Code, sec. 370.

NOTE.—Chapter "Of arrest and bail" is chap. 12 of this title.

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# CHAPTER THIRTY-NINE.

## OF THE TRIAL OF ISSUES IN ACTIONS OF AN EQUITABLE NATURE.


Sec.
1203. Certain provisions to apply.
1204. How and when testimony taken.
1205. Conduct of the trial.
1206. Objections to depositions, when and how made.
1207. Same subject.
1208. Chapters 20 and 24 shall apply.
1209. Judgment of dismissal before trial and effect thereof.
1210. Same after trial.
1211. Chapters 26, 27, and 28 to apply.
1212. When judgment may be given in vacation; entry, roll, and final record thereof.


June 6, 1900.
31 Stat. L., 395–396.
R. S., 2d Supp., pp. 1269–1270.
Certain provisions to apply.

SEC. 1203. The provisions of chaper fifteen of this title shall apply to actions of an equitable nature except as in this chapter otherwise or specially provided. Both issues of law and fact shall be tried by the court, unless referred. Whenever it becomes necessary or proper to inquire of any fact by the verdict of a jury, the court may direct a

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statement thereof, and that a jury be formed to inquire of the same. The statement shall be tried as an issue of fact in an action, and the verdict may be read as evidence on the trial of the action.

Carter Code, sec. 371; Charlton Code, sec. 371.

Pratt *v.* United Alaska Min. Co. (1 Alaska Rep., 95). Seliner *v.* McKay 2 Alaska Rep., 567).

Elbing *v.* Hastings (3 Alaska Rep., 131). "This section, 1203, provides for jury trial in equitable actions whenever it becomes necessary or proper to inquire of any fact by the verdict of a jury. The court held in this case that such a jury is not a common-law jury, and trial by such a jury is not demandable by either party as a matter of right; but such a jury trial rests in the sound discretion of the court, subject, of course, to review by the appellate tribunal, for abuse of discretion or arbitrary exercise of power by the chancellor."

Swegle *v.* Wells (7 Or. Rep., 223). Raymond *v.* Flavel (40 Pac. Rep., 158). De Lashmutt *v.* Everson (7 Or. Rep., 218).

How and when testimony taken.

SEC. 1204. All issues of fact in actions of an equitable nature may be tried by the court, and if tried by the court, the evidence shall be presented and the trial conducted in the same manner as other actions: *Provided*, The court may, in its discretion, refer the case to a referee pursuant to the provisions of this title. In all such actions the court, in rendering its decisions therein, shall set out in writing its findings of fact upon all the material issues of fact presented by the pleadings, together with its conclusions of law thereon; but such findings of fact and conclusions of law shall be separate from the judgment, and shall be filed with the clerk, and shall be incorporated in, and constitute a part of, the judgment roll of the case; and such findings of fact shall have the same force and effect, and be equally conclusive, as the verdict of a jury in an action. Exceptions may be taken during the trial to the ruling of the court, and also to its findings of fact, and a statement of such exceptions prepared and settled as in an action, and the same shall be filed with the clerk within ten days from the entering of the decree, or such further time as the court may allow.

Carter Code, sec. 372; Charlton Code, sec. 372.

Linderberg *v.* Doverspike (141 Fed. Rep., 59; 72 C. C. A., 69; 2 Alaska Rep., 675).

Juneau Water Co. *v.* Jualpa Co. (3 Alaska Rep., 387). "On trial of this case, being an equity suit, the judge gave a written opinion, wherein he discussed both law and effects. The court held, that such opinion was merely a written argument or statement of reasons for the judge's conclusions, and did not constitute the formal findings of fact and conclusions of law required by sections 1041 and 1204 of this code."

Martin *v.* Martin (12 Pac. Rep., 231). Verdier *v.* Bigne (19 Pac. Rep., 604). Craig *v.* Calif. Vinyard Co. (46 Pac. Rep., 421). Bloggan *v.* Smith (56 Pac. Rep., 292; 44 L. R. A., 522). Tallmadge *v.* Hooper (61 Pac. Rep., 349). Marx *v.* Crow (13 Pac. Rep., 55). Centry *v.* Pac. Live Stock Co. (77 Pac. Rep., 115). Powers *v.* Powers (80 Pac. Rep., 1058).

Conduct of the trial.

SEC. 1205. When the action is called for trial, the trial shall proceed in the order prescribed in subdivisions one, two, three, four, and five of section ten hundred and nineteen, unless the court for special reasons otherwise directs.

Carter Code, sec. 373; Charlton Code, sec. 373.

Objections to depositions, when and how made.

SEC. 1206. Upon the trial either party may object to the reading of a deposition, or any part thereof, when offered by the other because the witness is incompetent, or the testimony is so, or irrelevant, and not otherwise. All other objections to depositions shall be taken by written exceptions filed with the clerk within twenty days from the filing of the testimony, and may be heard and decided by the court or judge thereof at any time thereafter before the trial of the action.

Carter Code, sec. 374; Charlton Code, sec. 374.

De Bow *v.* Wollenberg (96 Pac. Rep., 536).

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Same subject.

SEC. 1207. When it appears from the deposition that a party was present at the examination of a witness, such party shall not be heard to object to anything in or concerning such depositions not excepted to at the time of taking the same, except the objections allowed to be taken on the trial as provided in section twelve hundred and four of this title. When any part of the examination of a witness is excluded for any reason, so much of the cross-examination as relates to the same matter is excluded also.

Carter Code, sec. 375; Charlton Code, sec. 375.

Chapters 20 and 24 shall apply.

SEC. 1208. The provisions of chapters twenty and twenty-four of this title shall apply to actions of an equitable nature, but the final determination of the rights of the parties thereto is called a judgment, and any intermediate determination is called an order.

Carter Code, sec. 376; Charlton Code, sec. 376.

Judgment of dismissal before trial and effect thereof.

SEC. 1209. A judgment dismissing an action may be given against the plaintiff in any of the cases specified in subdivisions one, two, and three of section one thousand and sixty-nine, except the last clause of such subdivision three. Such judgment is a determination of the action, but shall not have the effect to bar another action for the same cause or any part thereof.

Carter Code, sec. 377; Charlton Code, sec. 377.

Debney *v.* Iles (3 Alaska Rep., 446). | Comegys *v.* Hendricks (106 Pac. Rep., 1016).
Miller *v.* Margerie (170 Fed. Rep., 710). |

Same after trial.

SEC. 1210. Whenever upon the trial it is determined that the plaintiff is not entitled to the relief claimed, or any part thereof, a judgment shall be given dismissing the action, and such judgment shall have the effect to bar another action for the same cause or any part thereof, unless such determination be on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of such plaintiff, give such judgment without prejudice to another action by the plaintiff for the same cause or any part thereof.

Carter Code, sec. 378; Charlton Code, sec. 378.

Debney *v.* Iles (3 Alaska Rep., 446). | 90 C. C. A., 403). Law Trust Co. *v.*
Cook *v.* Klonos (164 Fed. Rep., 529; | Houge (62 Pac. Rep., 380).

Chapters 26, 27, and 28 to apply.

SEC. 1211. The provisions of chapters twenty-six and twenty-seven of this title, from and inclusive of section one thousand and seventy-three to and inclusive of section one thousand and seventy-six, shall apply to actions of an equitable nature. The provisions of chapter twenty-eight shall apply to controversies which might be the subject of such an action.

Carter Code, sec. 379; Charlton Code, sec. 379.

Ghores *v.* Illinois & J. Gravel Min. Co. (67 Pac. Rep., 666).

NOTE.—In above section it provides that the provisions of chaps. 26 and 27 shall apply. Sec. 240, Carter, sec. 1072 of this code, ought to be added among the sections quoted.

When judgment may be given in vacation; entry, roll, and final record thereof.

SEC. 1212. When upon the submission of such an action the court is unadvised as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing the same with the clerk. When a judgment is given in an action of an equitable nature, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Sections one thousand and eighty-three, one thousand and eighty-four, one thousand and eighty-six, one thousand and eighty-seven, and one thousand and ninety-one of this title shall

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apply to actions of an equitable nature. The provisions of chapter thirty of this title shall apply to judgments and the final record or roll thereof.

Carter Code, sec. 380; Charlton Code, sec. 380.

Nelson *v.* Meehan (2 Alaska Rep., 489). Chapman *v.* Wilbur (5 Or. Rep., 300).

## CHAPTER FORTY.

### OF THE MODE OF ENFORCING A JUDGMENT IN ACTIONS OF AN EQUITABLE NATURE.

Sec.
1213. When equivalent to performance.
1214. Certain chapters to apply.

June 6, 1900.

31 Stat. L., 396. R. S., 2d Supp., p. 1270. When equivalent to performance.

SEC. 1213. A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party do not comply therewith, be deemed and taken to be equivalent thereto. The court or judge thereof may enforce an order or judgment in an action of an equitable nature, other than for the payment of money, by punishing the party refusing or neglecting to comply therewith, as for a contempt.

Carter Code, sec. 381; Charlton Code, sec. 381.

Newhouse *v.* Newhouse (12 Pac. Rep., 422). Rostel *v.* Moret (23 Pac. Rep., 900). Johnson *v.* Tomlinson (68 Pac. Rep., 406).

Certain chapters to apply.

SEC. 1214. The provisions of chapter thirty-one of this title shall apply to the enforcement of judgments so far as the nature of the judgment may require or admit of it, but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in an action.

Carter Code, sec. 382; Charlton Code, sec. 382.

Tilton *v.* Barrell (17 Fed. Rep., 61). Well, Fargo & Co. *v.* O. R. & N. Co. (9 Saw., 601).

## CHAPTER FORTY-ONE.

### OF INJUNCTION.

Sec.
1215. Definition of, and how permanent injunction enforced.
1216. Allowance of injunction.
1217. Service of the order allowing the injunction.
1218. When defendant may be restrained during the pendency of the action.
1219. Allowance of injunction after answer.
1220. Motion to vacate or modify injunction.

June 6, 1900.

31 Stat. L., 396–397. R. S., 2d Supp., pp. 1271–1272. Definition of, and how permanent injunction enforced.

SEC. 1215. An injunction is an order requiring a defendant in an action to refrain from a particular act. It is only allowed as a provisional remedy, and when a judgment is given enjoining a defendant, such judgment shall be effectual and binding on such defendant without other proceeding or process, and may be enforced, if necessary, as provided in section twelve hundred and thirteen.

Carter Code, sec. 383; Charlton Code, sec. 383.

Corbus *v.* Alaska Treadwell Co. (99 Fed. Rep., 334; 1 Alaska Rep., 760). Corbus *v.* Alaska Treadwell Co. (187 U. S. Rep., 455; 2 Alaska Rep., 674). The Alaska G. M. Co. *v.* Barbridge (1 Alaska Rep., 311). Ames *v.* Kruzner (1 Alaska Rep., 596). U. S. *v.* N. W. Trading Co. (1 Alaska Rep., 5). Binswanger *v.* Henninger (1 Alaska Rep., 509). Lewis *v.* Johnson (1 Alaska Rep., 529). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 686). Karl *v.* Pilkington (2 Alaska Rep., 191). Monohan *v.* Lynch

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(2 Alaska Rep., 132). Linderberg *v.* Doverspike (2 Alaska Rep., 177). Heine *v.* Roth (2 Alaska Rep., 416). Conrad *v.* Miller (2 Alaska Rep., 433). Steele *v.* Tanana Mines R. Co. (2 Alaska Rep., 451). Miocene Ditch Co. *v.* Jacobson (2 Alaska Rep., 567). Stewart *v.* Washington & Alaska S. S. Co. (187 U. S. Rep., 466; 2 Alaska Rep., 673). Juneau Ferry & Nav. Co. *v.* Alaska S. S. Co. (121 Fed. Rep., 356; 58 C. C. A., 34; 2 Alaska, 674). U. S. Berrigan (2 Alaska Rep., 442). Frye-Bruhn Co. *v.* Myer (121 Fed. Rep., 533; 58 C. C. A., 529; 2 Alaska Rep., 693). Redden *v.* Harlan (2 Alaska Rep., 402). Daigle *v.* Maddocks (2 Alaska Rep., 387). Kuzek *v.* Magaha (148 Fed. Rep., 618). Bush *v.* Pioneer Min. Co. (154 Fed. Rep., 480). State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978. Katz *v.* Obenchain (85 Pac. Rep., 617). State *v.* Sieber (88 Pac. Rep., 313). Roots *v.* Boring Jct. Lbr. Co. (92 Pac. Rep., 811; 94 Pac. Rep., 182). Watts *v.* Spencer (94 Pac. Rep., 39). Williams *v.* Altnow (95 Pac. Rep., 200).

Allowance of injunction.

SEC. 1216. An injunction may be allowed by the court or judge thereof at any time after the commencement of the action and before judgment. Before allowing the same the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs and disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as he may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Carter Code, sec. 384; Charlton Code, sec. 384.

Howard *v.* Linderberg (2 Alaska Rep., 301). Elliott *v.* Kuzek (2 Alaska Rep., 587). Linderberg *v.* Howard (146 Fed. Rep., 467; 77 C. C. A., 23). Miocene Ditch Co. *v.* Jacobson (146 Fed. Rep., 330; 77 C. C. A., 106). Sullivan *v.* Cartier (147 Fed. Rep., 222; 77 C. C. A., 448). McCloskey *v.* Pac. Coast Co. (160 Fed. Rep., 794). Stone *v.* Cason (1 Or. Rep., 100). Ruble *v.* Coyote G. S. Min. Co. (10 Or. Rep., 39). Olds *v.* Carey (10 Pac. Rep., 786). Officer *v.* Mornson (102 Pac. Rep., 792).

Service of the order allowing the injunction.

SEC. 1217. The undertaking and affidavits, if any, upon which the injunction is allowed, shall be filed with the clerk. The order may be served as a summons and returned to the clerk, with a proof of service indorsed thereon, except that the service shall be made upon the defendant personally. The order may be filed with the clerk at once, and shall be deemed to be served upon the defendant from the date of its allowance, if it appear therefrom that the defendant appeared before the court or judge at the allowance thereof.

Carter Code, sec. 385; Charlton Code, sec. 385.

Livesley *v.* Krebs Hop Co. (97 Pac. Rep., 718).

When defendant may be restrained during the pendency of the action.

SEC. 1218. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce injury to the plaintiff; or when it appears by affidavit that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights concerning the subject of the action, and tending to render the judgment ineffectual; or when it appears by affidavit that the defendant threatens or is about to remove or dispose of his property, or any part thereof, with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Carter Code, sec. 386; Charlton Code, sec. 386.

Lane *v.* Jordan (116 Fed. Rep., 623; 54 C. C. A., 79; 1 Alaska Rep., 761). Elliott *v.* Kuzek (2 Alaska Rep., 587). Karl *v.* Pilkington (2 Alaska Rep., 192). Fogel *v.* Warsing (146 Fed. Rep., 949; 77 C. C. A., 199). James *v.* Wild Goose M. & T. Co. (143 Fed. Rep., 868). Bush *v.* Pioneer Min. Co. (154 Fed. Rep., 480). Alaska Pac. R. & Term. Co. *v.* Copper Riv. & N. W. R. Co. (160 Fed. Rep., 862; 87 C. C. A., 666). Waskey *v.* McNaught (163 Fed. Rep., 928).

NOTE.—And see other cases cited under sec. 1215, ante.

*Generally*: Helm *v.* Gilroy (26 Pac. Rep., 851). Tongue *v.* Gaston (10 Or. Rep., 328). Parsons *v.* Hartman (37 Pac. Rep., 61). Wellman *v.* Harker (3 Or. Rep., 253). Salem Flour Mill Co.

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*v.* Lord (70 Pac. Rep., 832). Harlow *v.* Oregonian Pub. Co. (78 Pac. Rep., 737). Ghores *v.* Ill. & J. Gravel Min. Co. (67 Pac. Rep., 666). State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978). Smith *v.* Nelson (78 Pac. Rep., 740). Montgomery *v.* Shaver (66 Pac. Rep., 923). Moss Merch. Co. *v.* First Nat. Bank (82 Pac. Rep., 8). Jackson *v.* Stearns (84 Pac. Rep., 798). White *v.* Savage (87 Pac. Rep., 1040). Livesley *v.* Krebbs Hop Co. (97 Pac. Rep., 718).

*Irreparable injury*: Heine *v.* Roth (2 Alaska Rep., 416). Portland *v.* Baker (8 Or. Rep., 356). Moore *v.* Holladay (72 Pac. Rep., 801). Krause *v.* Ore. I. & S. Co. (77 Pac. Rep., 833). Halla *v.* Rogers (176 Fed. Rep., 709).

*Against public officers, corporations, etc.*: Corbus *v.* Alaska Treadwell Co. (99 Fed. Rep., 334; 187 U. S., 455). Stewart *v.* Wash. & Alaska S. S. Co. (187 U. S. Rep., 466). State *v.* Lord (43 Pac. Rep., 471). State *v.* Pennoyer (37 Pac. Rep., 906; 25 L. R. A., 862). Sherman *v.* Bellows (34 Pac. Rep., 549). Carman *v.* Woodruff (10 Or. Rep., 133). Warmington *v.* Pierce (30 Pac. Rep., 450). Dorothy *v.* Pierce (41 Pac. Rep., 688). Avery *v.* Job (36 Pac. Rep., 293). Brownfield *v.* Houser (49 Pac. Rep., 843). White *v.* Commissioners (10 Pac. Rep., 484). State *v.* Metschan (46 Pac. Rep., 791). Cherry *v.* Matthews (36 Pac. Rep., 529). Kendall *v.* Post (8 Or. Rep., 144). Goodnough *v.* Powell (32 Pac. Rep., 396). Rector of St. Davids *v.* Wood (34 Pac. Rep., 18). Kadderly *v.* City of Portland (74 Pac. Rep., 710; 75 Pac. Rep., 222). Schooling *v.* City of Harrisburg (71 Pac. Rep., 605). Salem Flour Mill Co. *v.* Lord (70 Pac. Rep., 832). Davis *v.* City of Silverton (82 Pac. Rep., 16). Sears *v.* James (82 Pac. Rep., 14). Wolfgard *v.* Fisher (84 Pac. Rep., 850). Multnomah County *v.* White (85 Pac. Rep., 78). Pac. States Tel. Co. *v.* City of Salem (89 Pac. Rep., 145).

*Restraining actions, executions, etc.*: Sanford *v.* Sanford (13 Pac. Rep., 602). White *v.* Estees (28 Pac. Rep., 71). Galbraith *v.* Barnard (25 Pac. Rep., 1110). McDonald *v.* McKenzie (14 Pac. Rep., 868). Handley *v.* Jackson (50 Pac. Rep., 915). Parsons *v.* Hartman (37 Pac. Rep., 61). Wilhelm *v.* Woodcock (5 Pac. Rep., 202). Ladd *v.* Ramsby (10 Or. Rep., 307). Nicklin *v.* Hobin (10 Pac. Rep., 835). Putnam *v.* Webb (15 Pac. Rep., 711). Marks *v.* Stephens (63 Pac. Rep., 824).

*Nuisances*: See cases cited under sec. 1149, chap. 33, ante.

*Waste*: See cases cited under sec. 1153, chap. 33, ante.

*Trespass*: Ellen *v.* Dunlap (33 Pac. Rep., 675). Haines *v.* Hall (20 Pac. Rep., 831). Parker *v.* Furlong (62 Pac. Rep., 490). Smith *v.* Gardner (6 Pac. Rep., 771). Mendenhall *v.* Water Co. (39 Pac. Rep., 399). Garrett *v.* Bishop (41 Pac. Rep., 10). Bishop *v.* Bailey (41 Pac. Rep., 937). Norton *v.* Elwert (41 Pac. Rep., 926). Moore *v.* Holladay (72 Pac. Rep., 801). Tomasini *v.* Taylor (72 Pac. Rep., 324). Gentry *v.* Pacific Live Stock Co. (77 Pac. Rep., 115). Hume *v.* Burns (90 Pac. Rep., 1009). James *v.* Wild Goose M. & T. Co. (143 Fed. Rep., 868).

*Special and unique services*: Cort *v.* Lassard (22 Pac. Rep., 1054).

*Boycotts*: Longshore Printing Co. *v.* Howell (38 Pac. Rep., 547).

*Taxes*: Oregon & Wash. Sav. Bank *v.* Jordon (17 Pac. Rep., 621). Welsh *v.* Clatsop County (33 Pac. Rep., 934). Dawson *v.* Croisan (23 Pac. Rep., 267). Sperry *v.* City of Albina (21 Pac. Rep., 453). Or. & Calif R. Co. *v.* Lane County (31 Pac. Rep., 964). Goodnough *v.* Powell (32 Pac. Rep., 396). Dayton *v.* Multnomah County (55 Pac. Rep., 23). Brown *v.* School Dist. (7 Pac. Rep., 357). Alliance Trust Co. *v.* Multnomah County (63 Pac. Rep., 498). Welsh *v.* City of Astoria (37 Pac. Rep., 66). Ladd *v.* Spencer (31 Pac. Rep., 474). Hawthorne *v.* East Portland (10 Pac. Rep., 342). House *v.* Linn County (60 Pac. Rep., 843). Dalton *v.* East Portland (5 Pac. Rep., 193). West Portland Fire Co. *v.* Kelly (45 Pac. Rep., 901). Ore. & Calif. R. Co. *v.* Jackson Co. (64 Pac. Rep., 307). Ankeny *v.* Blakely (74 Pac. Rep., 485). Allison *v.* Hutton (80 Pac. Rep., 101).

*Obstruction and diversion in water courses*: Union Lt. & Pr. Co. *v.* Lichty (71 Pac. Rep., 1044). Krause *v.* Ore. I. & S. Co. (77 Pac. Rep., 833). Harrington *v.* Demaris (77 Pac. Rep., 603). Beers *v.* Sharpe (75 Pac. Rep., 717). Mace *v.* Mace (67 Pac. Rep., 660; 68 Pac. Rep., 737). Mann *v.* Parker (86 Pac. Rep., 598). State *v.* Frost (86 Pac. Rep., 177). Kane *v.* Littlefield (86 Pac. Rep., 544). Brown *v.* Gold Coin Min. Co. (86 Pac. Rep., 361).

*Restraining the use of a public use of franchise*: Paquette *v.* Mt. Tabor St. R. Co. (22 Pac. Rep., 906). Willamette Iron Wks. *v.* O. R. & N. Co. (37 Pac. Rep., 1016). Pacific States Tel. Co. *v.* City of Salem (89 Pac. Rep., 145). Christian *v.* City of Eugene (89 Pac. Rep., 419).

*Insolvency*: Hume *v.* Burns (90 Pac. Rep., 1009).

*Appeal*: Beasche *v.* Pringle (26 Pac. Rep., 863). Fowle *v.* House (39 Pac. Rep., 5). Helm *v.* Gilroy (26 Pac. Rep., 851). Mace *v.* Mace (67 Pac. Rep., 660; 68 Pac. Rep., 737). Bush *v.* Pioneer Min. Co. (154 Fed. Rep., 480).

Allowance of injunction after answer.

SEC. 1219. An injunction shall not be allowed after the defendant has answered, except upon notice, but in such case the defendant may be restrained until the decision of the court or judge allowing or refusing the injunction; and before answer, if the court or judge deem it proper that the defendant should be heard before allowing an in-

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junction, an order may be made requiring the defendant to show cause, at a specified time and place, why the injunction should not be allowed, and in the meantime the defendant may be restrained.

Carter Code, sec. 387; Charlton Code, sec. 387.

Motion to vacate or modify injunction.

SEC. 1220. If the injunction be allowed without notice, the defendant may, at any time after answer, and before trial, apply, upon notice, to the court or judge thereof, to vacate or modify the same. The application may be made upon affidavits in addition to the answer, and if so, the plaintiff may oppose the same by affidavit, or other evidence, in addition to those upon which the injunction was allowed. If, upon the hearing of the motion, it satisfactorily appear that the injunction should not have been allowed, either in whole or in part, it shall be vacated or modified accordingly.

Carter Code, sec. 388; Charlton Code, sec. 388.

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# CHAPTER FORTY-TWO.

## OF THE FORECLOSURE OF LIENS UPON REAL PROPERTY.


Sec.
1221. Liens upon real property, how foreclosed.
1222. Parties defendant.
1223. Where two or more liens upon the same property.
1224. How judgment enforced.
1225. Property sold upon foreclosure, how redeemed.
1226. Action for foreclosure can not be maintained during pendency of action for the debt.
1227. Nature of judgment where debt payable in installments some of which not due.
1228. Effect of payment before sale.


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31 Stat. L., 397–399.

R. S., 2d Supp., pp. 1272–1273.

Liens upon real property, how foreclosed.

SEC. 1221. A lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. In such action, in addition to the judgment of foreclosure and sale, if it appear that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor or other lien debtor, or by any other person as principal or otherwise, the court shall also adjudge a recovery of the amount of such debt against such person or persons, as the case may be, as in the case of an ordinary judgment for the recovery of money.

Carter Code, sec. 389; Charlton Code, sec. 389.

Chambers *v.* Hannum (1 Alaska Rep., 468). Sale *v.* Meletus (3 Alaska Rep., 474).

*Foreclosure of liens*: Eubanks *v.* Leveridge (4 Saw. Rep., 278). Thompson *v.* Marshall (27 Pac. Rep., 957). Security Trust Co. *v.* Loewenberg (62 Pac. Rep., 647). Williams *v.* Wilson (70 Pac. Rep., 1031). U. S. Mtg. Co. *v.* McClure (70 Pac. Rep., 543). Martin *v.* Ross (86 Pac. Rep., 1). Lewis *v.* Beeman (80 Pac. Rep., 417). Thayer *v.* Buchanan (79 Pac. Rep., 343). Smith *v.* Leavenwerth (80 Pac. Rep., 1010). U. S. Mtg. & Trust Co. *v.* Willis (69 Pac. Rep., 266). Kaston *v.* Paxton (80 Pac. Rep., 209). Security Sav. & Trust Co. *v.* Goble (74 Pac. Rep., 919; 75 Pac. Rep., 697). Wright *v.* Conservative Inv. Co. (89 Pac. Rep., 387). Kramer v. Wilson 90 Pac. Rep., 183). Stewart *v.* Templeton (104 Pac. Rep., 978). Swank *v.* Elwert (105 Pac. Rep., 901). Sale *v.* Meletus (3 Alaska Rep., 474).

*Assignment of debt*: Bambarger *v.* Geiser (33 Pac. Rep., 609). Cooke *v.* Cooper (22 Pac. Rep., 945). Noble *v.* Watkins (87 Pac. Rep., 771).

*Reinstatement of lien after foreclosure sale*: Flanders *v.* Aumack (51 Pac. Rep., 447). Settlemeier *v.* Nessome (10 Or. Rep., 446). Lauriat *v.* Stratton (11 Fed. Rep., 109).

*Strict foreclosure*: Koerner *v.* Willamette Iron Works (58 Pac. Rep., 863). Sellwood *v.* Gray (5 Pac. Rep., 196). Security Savings Co. *v.* McKenzie (52

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Pac. Rep., 1046). Flannigan's Estate *v.* Gt. Cent. Land Co. (77 Pac. Rep., 485).

*Death of judgment debtor*: Verdier *v.* Bigne (19 Pac. Rep., 64). Teel *v.* Winston (29 Pac. Rep., 142).

*Vendor's lien*: Gee *v.* McMullen (12 Pac. Rep., 417). Coos Bay Wagon R. Co. *v.* Crocker (6 Saw. Rep., 574). Pease *v.* Kelly, 3 Or. Rep., 417. Burghardt *v.* Howard, 12 Pac. Rep., 79. Myer *v.* Beale (5 Or. Rep., 130). McHughs *v.* Eddy (4 Pac. Rep., 225). Teel *v.* Winston (29 Pac. Rep., 142). Flannigan's estate *v.* Gt. Cent. Land Co. (77 Pac. Rep., 485). Thompson *v.* Holladay (14 Pac. Rep., 725).

Parties defendant.

SEC. 1222. Any person having a lien subsequent to the plaintiff upon the same property or any part thereof, or who has given a promissory note or other personal obligation for the payment of the debt or any part thereof, secured by the mortgage or other lien which is the subject of the action, shall be made a defendant in the action, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary.

Carter Code, sec. 390; Charlton Code, sec. 390.

Griffin *v.* Internat. Trust Co. (161 Fed. Rep., 48). Osburn *v.* Logas (42 Pac. Rep., 997). Selwood *v.* Gray (5 Pac. Rep., 196). Delashmutt *v.* Sellwood (10 Or. Rep., 319). Wilson *v.* Tarter (30 Pac. Rep., 499). Koener *v.* Williamette Iron Works (58 Pac. Rep., 863). Gaines *v.* Childers (63 Pac. Rep., 487). Fahie *v.* Pressey (2 Or. Rep., 23). Ladd *v.* Mason (10 Or. Rep., 315). Wrenshaw *v.* Taylor (7 Or. Rep., 321). Watson *v.* Dundee Mtg. Co. (8 Pac. Rep., 548). Williams *v.* Wilson (70 Pac. Rep., 1031). U. S. Mtg. Co. *v.* McClear (70 Pac. Rep., 543). U. S. Mtg. & Trust Co. *v.* Marquam (69 Pac. Rep., 37).

Where two or more liens upon the same property.

SEC. 1223. When it is adjudged that any of the defendants have a lien upon the property, the court shall make a like judgment in relation thereto and the debt secured thereby as if such defendant were a plaintiff in the action; and when a judgment is given foreclosing two or more liens upon the same property or any portion thereof in favor of different persons not united in interest, such judgment shall determine and specify the order of time, according to their priority, in which the debts secured by such lien shall be satisfied out of the proceeds of the sale of the property.

Carter Code, sec. 391; Charlton Code, sec. 391.

Hovenden *v.* Knott (7 Pac. Rep., 30). Williams *v.* Wilson (70 Pac. Rep., 1031). Griffin *v.* Internat. Trust Co. (161 Fed. Rep., 48).

How judgment enforced.

SEC. 1224. The judgment may be enforced by execution as an ordinary judgment for the recovery of money, except as in this section otherwise or specially provided:

First. When a judgment of foreclosure and sale is given, an execution may issue thereon against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if it be in favor of different persons not united in interest, it shall issue upon the joint request of such persons, or upon the order of the court or judge thereof, on the motion of either of them;

Second. When the judgment is also against the defendants or any one of them in person, and the proceeds of the sale of the property upon which the lien is foreclosed is not sufficient to satisfy the judgment as to the sum remaining unsatisfied to either, the judgment may be enforced by execution as in ordinary cases. When in such case the judgment is in favor of different persons not united in interest, it shall be deemed a separate judgment as to such persons, and may be enforced accordingly.

Carter Code, sec. 392; Charlton Code, sec. 392.

Williams *v.* Wilson (70 Pac. Rep., 1031). Close *v.* Riddle (67 Pac. Rep., 932).

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Property sold upon foreclosure, how redeemed.

SEC. 1225. A judgment of foreclosure shall have the effect to bar the equity of redemption, and property sold on execution issued upon a judgment may be redeemed in like manner and with like effect as real property sold on an execution issued on a judgment.

Carter Code, sec. 393; Charlton Code, sec. 393.

Marshall *v.* Williams (28 Pac. Rep., 137). Besser *v.* Hawthorne (3 Or. Rep., 129). Lauriat *v.* Stratton (11 Fed. Rep., 109). Capital Lbr. Co. *v.* Ryan (54 Pac. Rep., 1093). Pomery *v.* Woodward (63 Pac. Rep., 194). Willis *v.* Miller (31 Pac. Rep., 827). Williams *v.* Wilson (70 Pac. Rep., 1031). Kaston *v.* Storey (80 Pac. Rep., 217). Marquam *v.* Ross (83 Pac. Rep., 852). Jacobson *v.* Lassas (90 Pac. Rep., 904).

NOTE.—As to redemption generally, see sec. 1118, etc., chap. 31, ante.

Action for foreclosure can not be maintained during pendency of action for the debt.

SEC. 1226. During the pendency of an action for the recovery of a debt secured by any lien mentioned in section twelve hundred and twenty-one, an action can not be maintained for the foreclosure of such lien, nor thereafter, unless judgment be given in such action that the plaintiff recover such debt or some part thereof, and an execution thereon against the property of the defendant in the judgment is returned unsatisfied in whole or in part.

Carter Code, sec. 394; Charlton Code, sec. 394.

Williams *v.* Wilson (70 Pac. Rep., 1031).

Nature of judgment where debt payable in installments some of which not due.

SEC. 1227. When an action is commenced to foreclose a lien by which a debt is secured, which debt is payable in installments, either of interest or principal, and any of such installments is not then due, the court shall adjudge a foreclosure of the lien, and may also adjudge a sale of the property for the satisfaction of the whole of such debt, or so much thereof as may be necessary to satisfy the installment then due, with costs of action; and in the latter case the judgment of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole or in part, whenever default shall be made in the payment of the installments not then due.

Carter Code, sec. 395; Charlton Code, sec. 395.

Effect of payment before sale.

SEC. 1228. If, before a judgment is given, the amount then due, with the costs of action, is brought into court and paid to the clerk, the action shall be dismissed, and if the same be done after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated, and the execution, if any have issued, be recalled by the clerk. When an installment not due is adjudged to be paid, the court shall determine and specify in the judgment what sum shall be received in satisfaction thereof, which sum may be equal to such installment or otherwise, according to the present value thereof. The provisions of this chapter as to liens upon personal property are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property.

Carter Code, sec. 396; Charlton Code, sec. 396.

## CHAPTER FORTY-THREE.

### OF ACTIONS FOR THE PARTITION OF REAL PROPERTY.


Sec.
1229. Who may maintain an action for partition.
1230. Complaint, what it shall contain.
1231. What lien creditors may be made defendants, etc.
1232. Summons, how directed.
1233. Upon whom summons may be served by publication.
1234. Answer, what to contain.
1235. Rights of the parties may be put in issue, etc.
1236. When order of sale may be made instead of partition.
1237. How referees to make partition.
1238. Proceedings on report of referees.




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Sec.
1239. Who not affected thereby.
1240. Expenses of referees.
1241. When order of sale may be made upon report of referees.
1242. In case of partial sale, how estate for life or years set off.
1243. When referee ordered to ascertain lien creditors.
1244. Referees to ascertain amount of liens.
1245. Notice to lien creditors.
1246. Duties of referee.
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1248. Effect of confirmation of report.
1249. Distribution of proceeds of sale.
1250. When party may be required to exhaust other securities.
1251. Proceedings not to delay or affect certain parties.
1252. Proceeds of sale to be distributed or paid into court.
1253. When action to continue.
1254. Sale by referees, how made.
1255. Court may direct sale to be made on credit.
1256. Mortgages and other securities, how taken by referees.
1257. Estate for life or years, how disposed of.
1258. Compensation of such estate in case of sale.
1259. If consent not given, court to determine the value of such estate.
1260. Rule for the determination of the value.
1261. Rights of unknown tenants to be protected.
1262. Inchoate or contingent interests, how provided for.
1263. Terms of sale to be made known at the time of sale.
1264. Referees not to purchase.
1265. Report of referees, what to contain.
1266. Report may be excepted to; effect of confirmation.
1267. Proceedings when a party or incumbrancer becomes purchaser.
1268. When and what proceeds of sale to be invested.
1269. In whose name securities taken or investments made.
1270. Same subject.
1271. When clerk to keep account and receive interest.
1272. When equal partition can not be made, court may adjudge compensation.
1273. When proceedings of sale paid to guardian of infant.
1274. When paid to guardian of insane person.
1275. Costs of partition, how apportioned.

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R. S., 2d Supp., pp. 1274–1279.

Who may maintain an action for partition.

SEC. 1229. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain an action of an equitable nature for the partition of such real property, according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appears that a partition can not be had without great prejudice to the owners.

Carter Code, sec. 397; Charlton Code, sec. 397.

Carlson *v.* Sullivan (146 Fed. Rep., 476; 77 C. C. A., 32). Forderer *v.* Schmidt (146 Fed. Rep., 480; 77 C. C. A., 36). Manley *v.* Boone (159 Fed. Rep., 633; 87 C. C. A., 197). Marks *v.* La Roque (39 Pac. Rep., 401). Savage *v.* Savage (23 Pac. Rep., 890). Windsor *v.* Simpkins (23 Pac. Rep., 669). Burnside *v.* Savier (6 Or. Rep., 154). Sterling *v.* Sterling (72 Pac. Rep., 741). Frye *v.* Moffet (93 Pac. Rep., 353). Mansfield *v.* Hill (108 Pac. Rep., 1007).

Complaint, what it shall contain.

SEC. 1230. The interest of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory device, or the remainder be a contingent remainder, so that such parties can not be named, that fact shall be set forth in the complaint.

Carter Code, sec. 398; Charlton Code, sec. 398.

Forderer *v.* Schmidt (146 Fed. Rep., 480; 77 C. C. R., 36). Hammer *v.* Silver (2 Or. Rep., 336).

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What lien creditors may be made defendants, etc.

SEC. 1231. The plaintiff shall make creditors having liens upon the property or any portion thereof, defendants in the action. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only upon the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Carter Code, sec. 399; Charlton Code, sec. 399.

Board of Commrs. *v.* Wiley (10 Or. Rep., 90). | House *v.* Fowle (29 Pac. Rep., 890).

Summons, how directed.

SEC. 1232. The summons shall be directed by name to all the tenants in common who are known, and in the same manner to all lien creditors who are made parties to the action, and generally to all persons unknown, having or claiming an interest or estate in the property.

Carter Code, sec. 400; Charlton Code, sec. 400.

Upon whom summons may be served by publication.

SEC. 1233. If a party having a share or interest in or lien upon the property be unknown, or either of the known parties reside out of the district or can not be found therein, and such fact be made to appear by affidavit, the summons may be served upon such absent or unknown party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication, it must be accompanied by a brief description of the property which is the subject of the action.

Carter Code, sec. 401; Charlton Code, sec. 401.

Answer, what to contain.

SEC. 1234. The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby, and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Carter Code, sec. 402; Charlton Code, sec. 402.

Rights of the parties may be put in issue, etc.

SEC. 1235. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined in such action, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment for partition or sale is given.

Carter Code, sec. 403; Charlton Code, sec. 403.

Forderer *v.* Schmidt (146 Fed. Rep., 480; 77 C. C. A., 36). Walker *v.* Goldsmith (12 Pac. Rep., 537). Sterling *v.* Sterling (72 Pac. Rep., 741).

When order of sale may be made instead of partition.

SEC. 1236. If it be alleged in the complaint and established by evidence, or if it appear by the evidence, without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition can not be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall adjudge a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or not ascertained.

Carter Code, sec. 404; Charlton Code, sec. 404.

Boone *v.* Manley (2 Alaska Rep., 553). "In this case the court held, that in a suit for partition of a mining claim it may decree partition by metes and bounds, or, if partition by metes and bounds can not be made without great prejudice to the owners, the claim may be sold and the proceeds divided."

Manley *v.* Boone (159 Fed. Rep., 633). Morrill *v.* Morrill (25 Pac. Rep., 362). Sterling *v.* Sterling (72 Pac. Rep., 741).

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How referees to make partition.

SEC. 1237. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Carter Code, sec. 405; Charlton Code, sec. 405.

Manley *v.* Boone (159 Fed. Rep., 633). | Sterling *v.* Sterling (72 Pac. Rep., 741).

Proceedings on report of referees.

SEC. 1238. The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed, a judgment shall be given that such partition be effectual forever, which judgment shall be binding and conclusive—

First. On all parties named therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or inheritance of such property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

Second. On all persons interested in the property who may be unknown, to whom notice shall have been given of the application for partition by publication, as directed by section twelve hundred and thirty-three; and

Third. On all other persons claiming from such parties or persons, or either of them.

Carter Code, sec. 406; Charlton Code, sec. 406.

Boone *v.* Manley (2 Alaska Rep., 553). Bybee *v.* Summers (4 Or. Rep., 354). Walker *v.* Goldsmith (12 Pac. Rep., 537). Morrill *v.* Morrill (25 Pac. Rep., 362). Savage *v.* Savage (23 Pac. Rep., 850). Sterling *v.* Sterling (72 Pac. Rep., 741).

Who not affected thereby.

SEC. 1239. But such judgment and partition shall not affect any tenants for years or for life of the whole of the property which is the subject of partition; nor shall such judgment or partition preclude any person, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

Carter Code, sec. 407; Charlton Code, sec. 407.

Bd. School Commrs. *v.* Wiley (10 Or. Rep., 86).

Expenses of referees.

SEC. 1240. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges.

Carter Code, sec. 408; Charlton Code, sec. 408.

When order of sale may be made upon report of referees.

SEC. 1241. If the referees report to the court that the property of which partition shall have been adjudged, or any separate portion thereof, is so situated that a partition thereof can not be made without great prejudice to the owners and the court is satisfied that such report is correct, it may thereupon, by an order, direct the referees to sell the property or separate portion thereof so situated.

Carter Code, sec. 409; Charlton Code, sec. 409.

Manley *v.* Boone (159 Fed. Rep., 633).

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In case of partial sale, how estate for life or years set off.

SEC. 1242. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold.

Carter Code, sec. 410; Charlton Code, sec. 410.

When referee ordered to ascertain lien creditors.

SEC. 1243. If an order of sale be made, and before a distribution of the proceeds thereof, the plaintiffs shall produce to the court a certificate showing the liens remaining unsatisfied, if any, by judgment upon the property, or any portion thereof, and unless he do so the court shall order a referee to ascertain them.

Carter Code, sec. 411; Charlton Code, sec. 411.

Referees to ascertain amount of liens.

SEC. 1244. If it appear by such certificate, or reference in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby, respectively, and the order of priority in which they are entitled to be paid out of the property.

Carter Code, sec. 412; Charlton Code, sec. 412.

Notice to lien creditors.

SEC. 1245. The plaintiff must cause a notice to be served, at least ten days before the time for appearance, on each person having such lien by judgment to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, on his judgment.

Carter Code, sec. 413; Charlton Code, sec. 413.

Duties of referee

SEC. 1246. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts thereon or secured thereby, and their priority, respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

Carter Code, sec. 414; Charlton Code, sec. 414.

Exceptions to report.

SEC. 1247. The report of the referee may be excepted to by either party to the action or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the district, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record or by publication thereof for such time and in such manner as the order may prescribe.

Carter Code, sec. 415; Charlton Code, sec. 415.

Effect of confirmation of report.

SEC. 1248. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the action and upon the lien creditors who have been duly served with the notice to appear before the referee as provided in section twelve hundred and forty-five.

Carter Code, sec. 416; Charlton Code, sec. 416.

Distribution of proceeds of sale.

SEC. 1249. The proceeds of the sale of the incumbered property shall be distributed by the judgment of the court as follows:

First. To pay its just proportion of the general cost of the action;

Second. To pay the costs of the reference;

Third. To satisfy the several liens, in their order of priority, by payment of the sums due and to become due, according to the judgment;

Fourth. The residue among the owners of the property sold, according to their respective shares.

Carter Code, sec. 417; Charlton Code, Sec. 417.

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When party may be required to exhaust other securities.

SEC. 1250. Whenever any party to the action or who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Carter Code, sec. 418; Charlton Code, sec. 418.

Proceedings not to delay or affect certain parties.

SEC. 1251. The proceedings to ascertain the amount of the liens and to determine their priority, as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale nor affect any other party whose rights are not involved in such proceedings.

Carter Code, sec. 419; Charlton Code, sec. 419.

Proceeds of sale to be distributed or paid into court.

SEC. 1252. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. But if no such direction be given all such proceeds and securities shall be paid into court or deposited as directed by the court.

Carter Code, sec. 420; Charlton Code, sec. 420.

When action to continue.

SEC. 1253. When the proceeds of sales of any shares or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleading, as in an original action.

Carter Code, sec. 421; Charlton Code, sec. 421.

Sale by referees, how made.

SEC. 1254. All sales of real property made by the referee shall be made by public auction to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the time, place, and terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Carter Code, sec. 422; Charlton Code, sec. 422.

Court may direct sale to be made on credit.

SEC. 1255. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained to be invested for the benefit of unknown owners, infants, and parties out of the district.

Carter Code, sec. 423; Charlton Code, sec. 423.

Mortgages and other securities, how taken by referees.

SEC. 1256. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner.

Carter Code, sec. 424; Charlton Code, sec. 424.

Estate for life or years, how disposed of.

SEC. 1257. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment

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of the court a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Carter Code, sec. 425; Charlton Code, sec. 425.

Compensation for such estate in case of sale.

SEC. 1258. Any person entitled to an estate for life or years in any undivided part of the property, whose estates shall have been sold, shall be entitled to receive such sum in gross as may be deemed upon principles of law applicable to annuities a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

Carter Code, sec. 426; Charlton Code, sec. 426.

If consent not given, court to determine the value of such estate.

SEC. 1259. If such consent be not given, as provided in the last preceding section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

Carter Code, sec. 427; Charlton Code, sec. 427.

Rule for the determination of the value.

SEC. 1260. The proportion of the proceeds of the sale to be invested as provided in the section last preceding shall be ascertained and determined in the several cases as follows:

First. If an estate in dower be included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in such property upon which the claim of dower existed;

Second. If an estate by the curtesy, or other estate for life or years, be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share thereof in which such estate may be.

And in all cases the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale.

Carter Code, sec. 428; Charlton Code, sec. 428.

Rights of unknown tenants to be protected.

SEC. 1261. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Carter Code, sec. 429; Charlton Code, sec. 429.

Inchoate or contingent interests, how provided for.

SEC. 1262. In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportional value of such inchoate, contingent, or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured, or paid over in such manner as to protect the rights and interests of the parties.

Carter Code, sec. 430; Charlton Code, sec. 430.

Terms of sale to be made known at the time of sale.

SEC. 1263. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately, or otherwise if the court so directs.

Carter Code, sec. 431; Charlton Code, sec. 431.

Referees not to purchase.

SEC. 1264. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real

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property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Carter Code, sec. 432; Charlton Code, sec. 432.

Report of referees, what to contain.

SEC. 1265. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of lands sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

Carter Code, sec. 433; Charlton Code, sec. 433.

Report may be excepted to; effect of confirmation.

SEC. 1266. The report of sale may be excepted to by any party entitled to a share of the proceeds, in like manner and with like effect as in ordinary cases. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale, which acts they are hereby authorized to do. Such order shall have the effect to discharge the property of the estate or interest of every person mentioned in section twelve hundred and thirty-eight, and of tenants for life or years of the property sold, and shall be binding and conclusive upon all such persons, as if the same were a decree for the partition of such property, and upon all persons whomsoever as to the regularity of the proceedings concerning such sale, except as provided in section twelve hundred and sixty-four.

Carter Code, sec. 434; Charlton Code, sec. 434.

Proceedings when a party or incumbrancer becomes purchaser.

SEC. 1267. When a party entitled to a share of the property or an incumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Carter Code, sec. 435; Charlton Code, sec. 435.

When and what proceeds of sale to be invested.

SEC. 1268. When there are proceeds of sale belonging to an unknown owner, or to a person without the district who has no legal representatives within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same may be invested under such order in securities on interest for the benefit of the persons entitled thereto.

Carter Code, sec. 436; Charlton Code, sec. 436.

In whose name securities taken or investments made.

SEC. 1269. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Carter Code, sec. 437; Charlton Code, sec. 437.

Same subject.

SEC. 1270. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referee, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Carter Code, sec. 438; Charlton Code, sec. 438.

When clerk to keep account and receive interest.

SEC. 1271. The clerk in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the

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same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Carter Code, sec. 439; Charlton Code, sec. 439.

When equal partition can not be made, court may adjudge compensation.

SEC. 1272. When it appears that partition can not be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants unless in case of an infant it appears that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Carter Code, sec. 440; Charlton Code, sec. 440.

Boone *v.* Manley (2 Alaska Rep., 552).

When proceeds of sale paid to guardian of infant.

SEC. 1273. When the share of an infant is sold the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the action, upon such guardian giving the security required by law or directed by order of the court.

Carter Code, sec. 441; Charlton Code, sec. 441.

When paid to guardian of insane person.

SEC. 1274. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking, approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Carter Code, sec. 442; Charlton Code, sec. 442.

Costs of partition, how apportioned.

SEC. 1275. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Carter Code, sec. 443; Charlton Code, sec. 443.

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## CHAPTER FORTY-FOUR.

### OF ACTIONS OF AN EQUITABLE NATURE BY AND AGAINST EXECUTORS, ADMINISTRATORS, LEGATEES, HEIRS, AND DEVISEES.

Sec.
1276. In what actions chapter 37 shall apply.
1277. An action against next of kin by creditor of the estate.
1278. Each liable for the whole amount received.
1279. Next of kin may maintain an action to compel contribution.
1280. An action against legatees by creditor of the testator.
1281. Apportionment of costs in an action against next of kin or legatees.
1282. Payment of the amount recovered against any one satisfies the judgment as to such person.

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Sec.
1283. Heirs or devisees liable for the debts of their ancestor or testator.
1284. In what cases and to what extent not liable.
1285. Section 1284 not to affect a case where debt charged upon real estate by will.
1286. Preference of debts, and definition thereof.
1287. How judgment against heir or devisee enforced.
1288. When heirs or devisees personally liable.
1289. Judgment against several heirs or devisees jointly to be apportioned among them.
1290. Devisees not liable when there are assets.
1291. Liable for deficiency only.
1292. Two preceding sections not to affect a case where the debt is charged upon the real property by the will.

June 6, 1900.

31 Stat. L., 405-407.

In what actions chapter 37 shall apply.

SEC. 1276. The provisions of chapter thirty-seven of this title shall apply to actions of an equitable nature by and against executors and administrators, except as in this chapter otherwise or specially provided. Sections eleven hundred and eighty-three, eleven hundred and eighty-four, and eleven hundred and eighty-five of such chapter shall not so apply. All causes of actions of an equitable nature by one person against another, however arising, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action of an equitable nature thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

Carter Code, sec. 444; Charlton Code, sec. 444.

Kohn *v.* McKinnon (90 Fed. Rep., 623; I Alaska Rep., 744). In re Estate of M. O. Gladdough (1 Alaska Rep., 649). Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 678). Fox Admr. *v.* McKay (1 Alaska Rep., 329). Ranshaw *v.* Taylor (7 Or. Rep., 315). Ladd *v.* Mills (75 Pac. Rep., 141); Seed *v.* Jennings (83 Pac. Rep., 872).

An action against next of kin by creditor of the estate.

SEC. 1277. The next of kin of a deceased person are liable to an action by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The action may be against all the next of kin jointly or against any one or more of them severally.

Carter Code, sec. 445; Charlton Code, sec. 445.

Grange Union v. Burkhart (8 Or. Rep., 51).

Each liable for the whole amount received.

SEC. 1278. In such action the plaintiff may recover the value of all the assets received by all the defendants in the action if necessary to satisfy his debt; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other next of kin to whom assets have also been delivered.

Carter Code, sec. 446; Charlton Code, sec. 446.

Next of kin may maintain an action to compel contribution.

SEC. 1279. Any one of the next of kin against whom a recovery is had pursuant to section twelve hundred and seventy-eight may maintain an action against all the other next of kin of the deceased person to whom any such assets have been delivered jointly, or against any of them separately, for a just and equal contribution, and may recover of each defendant such amount as shall be in the same proportion to the whole sum collected of the plaintiff as the value of the assets deamong the several defendants in proportion to the amount recovered to all the next of kin of the deceased.

Carter Code, sec. 447; Charlton Code, sec. 447.

An action against legatees by creditor of the testator.

SEC. 1280. Legatees are liable to an action by a creditor of the testator to recover the value of any legacy received by them. The action

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may be maintained against all the legatees jointly or against any one or more of them severally. In such action the plaintiff shall not recover unless he shows—

First. That no assets were delivered by the executor or administrator of the testator to his next of kin; or

Second. That the value of such assets has been recovered by some other creditor; or

Third. That such assets are not sufficient to satisfy the demand of the plaintiff.

And in the last case he shall recover only the deficiency. The whole amount which the plaintiff shall recover shall be apportioned among all the legatees of the testator in proportion to the value of their legacies, respectively, and his proportion shall only be recovered of each legatee.

Carter Code, sec. 448; Charlton Code, sec. 448.

Apportionment of costs in an action against next of kin or legatees.

SEC. 1281. In an action against several next of kin or legatees jointly for assets delivered to them, if a recovery be had against such next of kin or legatees, the cost of such action shall be apportioned among the several defendants in proportion to the amount recovered against each of them.

Carter Code, sec. 449; Charlton Code, sec. 449.

Payment of the amount recovered against any one satisfies the judgment as to such person.

SEC. 1282. A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

Carter Code, sec. 450; Charlton Code, sec. 450.

Heirs or devisees liable for the debts of their ancestor or testator.

SEC. 1283. Heirs and devisees are liable to an action by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all the heirs who are liable shall be made parties to the action.

Carter Code, sec. 451; Charlton Code, sec. 451.

In what cases and to what extent not liable.

SEC. 1284. But the heirs are not liable for the debt, unless it appear that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof shall have been collected, the heirs of such deceased person are liable for the residue.

Carter Code, sec. 452; Charlton Code, sec. 452.

Section 1284 not to affect a case where debt charged upon real estate by will.

SEC. 1285. The section last preceding shall not affect the liability of heirs for a debt of their ancestor where such debt was by his will expressly charged exclusively on the real properties descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

Carter Code, sec. 453; Charlton Code, sec. 453.

Preference of debts, and definition thereof.

SEC. 1286. In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as herein provided, they shall be liable therefor without other priority or preference than such ancestors would be. The word "debt," as used in this chapter, shall be construed to include all claims for the payment of money

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which survive against the personal representatives of the deceased, as provided in section twelve hundred and seventy-six.

Carter Code, sec. 454; Charlton Code, sec. 454.

How judgment against heir or devisee enforced.

SEC. 1287. A judgment against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to the heir or devisee, and not otherwise. Such judgment shall have preference as a lien on such real property to any judgment or decree obtained against such heir or devisee on account of a debt or demand due in his own right.

Carter Code, sec. 455; Charlton Code, sec. 455.

When heirs or devisees personally liable.

SEC. 1288. When it appears in the action that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so aliened, and a judgment may be given against him therefor, to be enforced by execution, as if the judgment were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before action commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by the judgment therefor against such heir or devisee.

Carter Code, sec. 456; Charlton Code, sec. 456.

Judgment against several heirs or devisees jointly to be apportioned among them.

SEC. 1289. In an action against several heirs jointly, or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the testator in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or devisee.

Carter Code, sec. 457; Charlton Code, sec. 457.

Devisees not liable when there are assets.

SEC. 1290. A devisee shall not be liable to the creditor of his testator unless it appear that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appear that after due proceedings the creditor has been unable to recover the debt, or any part thereof, from the personal representatives of the testator or from his next of kin, legatees, or heirs.

Carter Code, sec. 458; Charlton Code, sec. 458.

Liable for deficiency only.

SEC. 1291. In either of the cases specified in the section last preceding the amount of the deficiency of the personal assets, and of the real property descended, to satisfy the debt of the plaintiff, or the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees, and heirs, may be recovered of the devisees of such testator, to the extent of the value of the real property devised to them respectively.

Carter Code, sec. 459; Charlton Code, sec. 459.

Two preceding sections not to affect a case where the debt is charged upon the real property by the will.

SEC. 1292. The two sections last preceding shall not affect the liability of devisees for a debt of their testator where such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee, or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

Carter Code, sec. 460; Charlton Code, sec. 460.

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# CHAPTER FORTY-FIVE.

## ACTIONS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT.


Sec.
1293. Husband or wife may maintain action.
1294. What marriages absolutely void.
1295. What marriages void when so declared.
1296. At whose action marriages declared void.
1297. At whose action marriages declared voidable.
1298. Action to declare marriage valid.
1299. For what causes marriages may be dissolved.
1300. Residence of parties.
1301. Same.
1302. Pleas in bar by defendant.
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1304. Judgment for maintenance for the custody of children.
1305. Power of court to modify decree.
1306. Right to remarry.


June 6, 1900.
31 Stat. L., 408-410.

Husband or wife may maintain action.

SEC. 1293. A husband or wife may maintain an action of an equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Carter Code, sec. 461; Charlton Code, sec. 461.

Dodd *v.* Dodd (13 Pac. Rep., 509).
Webber *v.* Webber (17 Pac. Rep., 866).
State *v.* Eggleston (77 Pac. Rep., 738).
Kalyton *v.* Kalyton (74 Pac. Rep., 491).

*Service by publication*: McFarlane *v.* Cornelius (73 Pac. Rep., 325).

NOTE.—See sec. 1198, chap. 38, ante.

What marriages absolutely void.

SEC. 1294. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within the district, be absolutely void.

Carter Code, sec. 462; Charlton Code, sec. 462.

Sturgis *v.* Sturgis (93 Pac. Rep., 696).

NOTE.—See sec. 432, chap. 2, Civil Code.

What marriages void when so declared.

SEC. 1295. When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from the time it is so declared by the decree of a court having jurisdiction thereof.

Carter Code, sec. 463; Charlton Code, sec. 463.

Sturgis *v.* Sturgis (93 Pac. Rep., 696).

NOTE.—See sec. 433, chap. 2, Civil Code.

At whose action marriages declared void.

SEC. 1296. A marriage may be declared void from the beginning, at the action of either party, for any of the causes specified in section twelve hundred and ninety-four, and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause, directly or otherwise.

Carter Code, sec. 464; Charlton Code, sec. 464.

At whose action marriages declared voidable.

SEC. 1297. A marriage shall not be declared void for any of the causes specified in section twelve hundred and ninety-five, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at the

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action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

Carter Code, sec. 465; Charlton Code, sec. 465.

Action to declare marriage valid.

SEC. 1298. When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections twelve hundred and ninety-four and twelve hundred and ninety-five, the same may be declared valid and lawful at the action of the other; and in such action the court shall have power, if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful and binding on the parties thereto.

Carter Code, sec. 466; Charlton Code, sec. 466.

For what causes marriages may be dissolved.

SEC. 1299. The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes:

First. Impotency existing at the time of the marriage and continuing to the commencement of the action;

Second. Adultery;

Third. Conviction of felony;

Fourth. Willful desertion for the period of two years;

Fifth. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action.

Carter Code, sec. 467; Charlton Code, sec. 467.

*Generally*: Wheeler *v.* Wheeler (24 Pac. Rep., 900). Adams *v.* Adams (6 Pac. Rep., 677). Hill *v.* Hill (33 Pac. Rep., 809). Smith *v.* Smith (8 Or. Rep., 100). State *v.* Luper (95 Pac. Rep., 811).

*Mutual fault*: Wheeler *v.* Wheeler (24 Pac. Rep., 900). Mendleson *v.* Mendleson (61 Pac. Rep., 645).

*Degree of proof*: Smith *v.* Smith (5 Or. Rep., 187).

*Adultery*: Eggerth *v.* Eggerth (16 Pac. Rep., 650). McMahon *v.* McMahon (9 Or. Rep., 525). Smith *v.* Smith (8 Or. Rep., 100). Cline *v.* Cline (10 Or. Rep., 478).

*Proof of adultery*: Hill *v.* Hill (33 Pac. Rep., 809). Rickard *v.* Rickard (9 Or. Rep., 168). Herberger *v.* Herberger (14 Pac. Rep., 70). Hall *v.* Hall (75 Pac. Rep., 141). Galigher *v.* Galigher (89 Pac. Rep., 146).

NOTE.—As to confession of adultery not being itself sufficient to justify decree, see sec. 1516, chap. 67, post.

*Drunkenness*: McBee *v.* McBee (29 Pac. Rep., 887). Ryan *v.* Ryan (47 Pac. Rep., 101).

*Desertion*: Sisemore *v.* Sisemore (21 Pac. Rep., 820). Ogilvie *v.* Ogilvie (61 Pac. Rep., 627). Monroe *v.* Monroe (26 Pac. Rep., 838). Earl *v.* Earl (72 Pac. Rep., 976). Luper *v.* Luper (96 Pac. Rep., 1099).

*Duty as to reconciliation*: Ogilvie *v.* Ogilvie (61 Pac. Rep., 627).

*Separation agreement*: Henderson *v.* Henderson (60 Pac. Rep., 597; 48 L. R. A., 766). Ogilvie *v.* Ogilvie (61 Pac. Rep., 627).

*Conviction of a felony*: Luper *v.* Luper (96 Pac. Rep., 1099).

*Cruel and inhuman treatment*: Beckley *v.* Beckley (31 Pac. Rep., 495). Boone *v.* Boone (8 Pac. Rep., 450). Mendleson *v.* Mendleson (61 Pac. Rep., 645). Taylor *v.* Taylor (8 Pac. Rep., 354). Hall *v.* Hall (9 Or. Rep., 452). Herberger *v.* Herberger (14 Pac. Rep., 70). Ryan *v.* Ryan (37 Pac. Rep., 101). Crow *v.* Crow (45 Pac. Rep., 761). Smith *v.* Smith (8 Or. Rep., 100). McMahon *v.* McMahon (9 Or. Rep., 525). Eggerth *v.* Eggerth (16 Pac. Rep., 650). Hill *v.* Hill (33 Pac. Rep., 809). Nickerson *v.* Nickerson (54 Pac. Rep., 277). Cline *v.* Cline (10 Or. Rep., 474). Benfield *v.* Benfield (74 Pac. Rep., 495). Jones *v.* Jones (77 Pac. Rep., 134). Mills *v.* Mills (83 Pac. Rep., 390). Galigher *v.* Galigher (89 Pac. Rep., 146).

Residence of parties.

SEC. 1300. When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be

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maintained when the plaintiff has been an inhabitant thereof for three years prior to the commencement of the action.

Carter Code, sec. 468; Charlton Code, sec. 468.

Terrill *v.* Terrill (2 Alaska Rep., 475). Jacobson *v.* Jacobson (5 Pac. Rep., 567). Parrish *v.* Parrish (96 Pac. Rep., 1066).

Mar. 2, 1903.
32 Stat. L., 944.
Divorces.
Residence of parties for two years.

SEC. 1301. In an action for the dissolution of the marriage contract the plaintiff therein must be an inhabitant of the district at the commencement of the action and for two years prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Amends: Carter Code, sec. 469; Charlton Code, sec. 469.

Terrill *v.* Terrill (2 Alaska Rep., 475). Parrish *v.* Parrish (96 Pac., 1066).

NOTE.—Prior to amendment the residential period was three years; the change to two years is the only matter of amendment.

June 6, 1900.
31 Stat. L., 408–410.
Pleas in bar by defendant.

SEC. 1302. In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and show in bar of the action either—

First. That the act was committed by the procurement or with the connivance of the plaintiff; or,

Second. That the act had been expressly forgiven, or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or,

Third. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision second of this section; or,

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth, or sixth of section twelve hundred and ninety-nine, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on subdivision third of section twelve hundred and ninety-nine, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Carter Code, sec. 470; Charlton Code, sec. 470.

*Condonation*: Eggerth *v.* Eggerth (16 Pac. Rep., 650). Attleberry *v.* Attleberry (8 Or. Rep., 225). Hill *v.* Hill (33 Pac. Rep., 809). Rice *v.* Rice (10 Pac. Rep., 495).

*Right of suit*: Jacobson *v.* Jacobson (5 Pac. Rep., 567).

*Recrimination*: Wheeler *v.* Wheeler (24 Pac. Rep., 900).

*Cross complaint*: Dodd *v.* Dodd (13 Pac. Rep., 551). Mills *v.* Mills (83 Pac. Rep., 390).

*Collusion agreement*: Thorpe *v.* Thorpe (10 Or. Rep., 494).

Maintenance and custody of children, pending action.

SEC. 1303. After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of the husband during the pendency of the action, and the court may restrain either

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or both parties from disposing of the property of either party pending the action.

Carter Code, sec. 471; Charlton Code, sec. 471.

Olsen *v.* Olsen (3 Alaska Rep., 616). Leak *v.* Leak (3 Alaska Rep., 164). Elliott *v.* Elliott (3 Alaska Rep., 352). Houston *v.* Timmerman (21 Pac. Rep., 1037). Therkelsen *v.* Therkelsen (54 Pac. Rep., 885). O'Brien *v.* O'Brien (57 Pac. Rep., 374). Smith *v.* Smith (3 Or. Rep., 364). Newhouse *v.* Newhouse (12 Pac. Rep., 422). McDonald *v.* O'Reily (78 Pac. Rep., 753). Sturges *v.* Sturgis (93 Pac. Rep., 696). Clay *v.* Clay (108 Pac. Rep., 119). Leak *v.* Leak (156 Fed. Rep., 474).

Judgment for maintenance and for the custody of children.

SEC. 1304. Whenever a marriage shall be declared void or dissolved the court shall have power to further decree as follows:

First. For the future care and custody of the minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper giving the preference to the party not in fault;

Second. For the recovery of the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or installments, as may be just and proper for such party to contribute toward the nurture and education thereof;

Third. For the recovery of the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife, when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

Carter Code, sec. 472; Charlton Code, sec. 472.

*Custody of children*: Boone *v.* Boone (8 Pac. Rep., 450). Lambert *v.* Lambert (19 Pac. Rep., 459). Pitman *v.* Pitman (3 Or. Rep., 553). Jackson *v.* Jackson (8 Or. Rep., 402). McDonald *v.* O'Reily (78 Pac. Rep., 753). Taylor *v.* Taylor (81 Pac. Rep., 367). Mills *v.* Mills (83 Pac. Rep., 390). Huffman *v.* Huffman (86 Pac. Rep., 593).

*Alimony*: O'Brien *v.* O'Brien (58 Pac. Rep., 892). Brandt *v.* Brandt (67 Pac. Rep., 508).

*On appeal*: Pope *v.* Pope (83 Pac. Rep., 786).

*Conclusiveness of judgment*: Cassaday *v.* Lindstrom (75 Pac. Rep., 222). Mansfield *v.* Hill (107 Pac. Rep., 471).

*Decree as to personal property*: Weber *v.* Weber (17 Pac. Rep., 866).

*Title to real estate* Wetmore *v.* Wetmore (67 Pac. Rep. 98). Starr *v.* Kaiser (68 Pac. Rep., 521). Hayes *v.* Horton (81 Pac. Rep., 386).

Power of court to modify decree.

SEC. 1305. At any time after a judgment is given the court or judge thereof, upon the motion of either party, on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

Carter Code, sec. 473; Charlton Code, sec. 473.

Willamette Tent & Awning Co. *v.* West Coast Grocery Co. (2 Alaska Rep., 6). Henderson *v.* Henderson (60 Pac. Rep., 597; 48 L. R. A., 766). Brandt *v.* Brandt (67 Pac. Rep., 508.) Corder *v.* Speake (51 Pac. Rep., 643). McFarlane *v.* McFarlane (73 Pac. Rep., 203). Mansfield *v.* Hill (108 Pac. Rep., 1004).

*Can not be collaterally attacked*: McFarlane *v.* Cornelius (73 Pac. Rep., 325).

Right to remarry.

SEC. 1306. A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate

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such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, and if he or she does so contract, shall be liable therefor as if such judgment had not been given, until the action has been heard and determined on appeal, and if no appeal be taken, the expiration of the period allowed by law to take such appeal.

Carter Code, sec. 474; Charlton Code, sec. 474.

McLennan *v.* McLennan (50 Pac. Rep., 802; 38 L. R. A., 863).

State *v.* Leasia (78 Pac. Rep., 328).

# CHAPTER FORTY-SIX.

## OF ACTIONS TO DETERMINE ADVERSE CLAIMS AND BOUNDARIES.


Sec.
1307. An action to determine adverse claims.
1308. An action to establish boundaries.
1309. Pleadings in such action.
1310. Mode of proceeding thereafter.
1311. Oath and duties of commisioners.
1312. Their report.


June 6, 1900.
31 Stat. L., 410-411.
An action to determine adverse claims.

SEC. 1307. Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.

Carter Code, sec. 475; Charlton Code, sec. 475.

NOTE.—Time to file, extended by act of June 7, 1910 (36 Stat. L., 459). See sec. 163, chap. 10 of Title IV, under "Public lands."

Ellen *v.* Myers (1 Alaska Rep., 116). Foss *v.* Dam (1 Alaska Rep., 346). U. S. *v.* NW. Trad. Co. (1 Alaska Rep., 5). Young *v.* Goldstein (97 Fed. Rep., 303; 1 Alaska Rep., 785). The Tyee Conson Min. Co. *v.* Langstedt (1 Alaska Rep., 439). Seliner *v.* McKay (2 Alaska Rep., 566). Fulkerson *v.* Chisna Min. & Imp. Co. (122 Fed. Rep., 782; 58 C. C. A., 582; 2 Alaska Rep., 737). Gavigan *v.* Crary (2 Alaska Rep., 378). Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 785). Johnson *v.* Croson G. M. Co. (157 Fed. Rep., 145; 84 C. C. A., 593). Elbing *v.* Hastings (3 Alaska Rep., 127, 128). DeLaney's Estate *v.* Kiernan (3 Alaska Rep., 198, 199). Cook *v.* Klonas (164 Fed. Rep., 529; 90 C. C. A., 403). Anderson *v.* Anvil Hydraulic Co. (3 Alaska Rep., 497). Lange *v.* Robinson (148 Fed. Rep., 799).

*Generally*: Murphey *v.* Sears (4 Pac. Rep., 471). Stark *v.* Starrs (73 U. S. Rep., 402). Holmes *v.* Oregon & Calif. R. Co. (5 Fed. Rep., 84). Moore *v.* Shofner (67 Pac. Rep., 511). Moores *v.* Klackamas Co. (67 Pac. Rep., 662). Crown Pt. Min. Co. *v.* Crisman (65 Pac. Rep., 87). Goldsmith *v.* Smith (10 Saw. Rep., 294; 21 Fed. Rep., 611). Day *v.* Snyder (43 Pac. Rep., 650). Shannon *v.* Portland (62 Pac. Rep., 50). Silver *v.* Lee (63 Pac. Rep., 882). Starrs *v.* Stark (1 Saw. Rep., 270). Minto *v.* Delaney (7 Or. Rep., 338). Umatilla Irrig. Co. *v.* Umatilla Imp. Co. (30 Pac. Rep., 30). Myer *v.* Kelly (29 Pac. Rep., 265). Coolidge *v.* Forward (2 Pac. Rep., 292). Edgar *v.* Edgar (37 Pac. Rep., 73). Tichnor *v.* Knapp (6 Or. Rep., 205). Thompson *v.* Wolfe (8 Or. Rep., 454). Canfield *v.* Clarke (21 Pac. Rep., 443). Johnson *v.* Thomlinson (68 Pac. Rep., 406). Wood *v.* Fisk (77 Pac. Rep., 128; 77 Pac. Rep., 738). Harding *v.* Harding (80 Pac. Rep., 97). Stevens *v.* Reeves (72 Pac. Rep., 346). Smith *v.* Nelson (78 Pac. Rep., 740). McLeod v. Lloyd (71 Pac. Rep., 795). Moore *v.* Holladay (72 Pac. Rep., 801). Muckle *v.* Good (77 Pac. Rep., 743). Winchester *v.* Hoover (70 Pac. Rep., 1035). Ladd *v.* Mill (75 Pac. Rep., 141). Blackburn *v.* Lewis (77 Pac. Rep., 746). Carlisle *v.* Sloan (75 Pac. Rep., 217). Wagner *v.* Dorris (73 Pac. Rep., 318). Payton *v.* Burns (69 Pac. Rep., 134). Holmes *v.* Wolfard (81 Pac. Rep., 819). Mount *v.* McAulay (83 Pac. Rep., 529). Keystone Mill Co. *v.* Equity Min. Co. (83 Pac. Rep., 1175). Katz *v.* Obenchain (85 Pac. Rep., 617). Sharkey *v.* Candiani (85 Pac. Rep., 219). Haines *v.* Connell (87 Pac. Rep., 265). Hendershott *v.* Sagsvold (90 Pac. Rep., 1104). Burns *v.* Kennedy (90 Pac. Rep., 1102). Grant *v.* O. R. & N. Co. (90 Pac. Rep., 1099). Brattain *v.* Conn (91 Pac. Rep., 458). Cooper *v.* Blair (92 Pac. Rep., 1074). McNear *v.* Guistin (92 Pac. Rep., 1075). Savage *v.* Savage (94 Pac. Rep., 182). Kieffer *v.* Victor Lamp Co. (98 Pac. Rep., 87). Kollock *v.*



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Bennett (100 Pac. Rep., 940). State v. Warner Valley Stock Co. (106 Pac. Rep., 7). Comeguis v. Hendricks (106 Pac. Rep., 716). State v. Warner Valley Stock Co. (108 Pac. Rep., 81).

*Difference between suit to remove a cloud and to quiet title*: O'Hara v. Parker (39 Pac. Rep., 1004). Teal v. Collins (9 Or. Rep., 91). Zumwalt v. Madden (31 Pac. Rep., 400). Goldsmith v. Gilliland (10 Saw. Rep., 606; 21 Fed. Rep., 611). King v. Higgins (3 Or. Rep., 407). Kadderly v. Frazer (63 Pac. Rep., 487). Meier v. Kelly (29 Pac. Rep., 265).

An action to establish boundaries.

SEC. 1308. In any case where any dispute or controversy exists, or may hereafter arise, between two or more owners of adjacent or contiguous lands in the district, concerning the boundary lines thereof, or the location of the line or lines dividing such lands, either party or any party to such dispute or controversy may bring and maintain an action of an equitable nature in the district court of the district, for the purpose of having such controversy or dispute determined, and such boundary line or lines, or dividing lines, ascertained and marked by proper monuments, upon the ground where such line or lines may be ascertained to be, and established in such action.

Carter Code, sec. 476; Charlton Code, sec. 476.

Meydenbauer v. Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 778). Price v. McIntosh (1 Alaska Rep., 286). Steen v. Wild Goose Min. Co. (1 Alaska Rep., 255).

*Generally*: Love v. Morrill (24 Pac. Rep., 916). King v. Brigham (31 Pac. Rep., 601; 18 L. R. A. Rep., 361). Dice v. McAuley (30 Pac. Rep., 160). School Dist. v. Price (31 Pac. Rep., 657). Minar v. Caples (31 Pac. Rep., 655). Rayburn v. Wynant (18 Pac. Rep., 588). First Nat. Bank v. McDonald (70 Pac. Rep., 901). Thiessen v. Worthington (68 Pac. Rep., 424). Hume v. Burns (90 Pac. Rep., 1009).

*Res adjudicata*: King v. Brigham (31 Pac. Rep., 601; 18 L. R. A., 361).

*Appeal*: School District v. Price (31 Pac. Rep., 657).

*Evidence*: Bewley v. Chapman (18 Pac. Rep., 489). Anderson v. McCormick (22 Pac. Rep., 1062). King v. Brigham (31 Pac. Rep., 601). Vandusen v. Shively (29 Pac. Rep., 76). Goodman v. Myrick (5 Or. Rep., 65). Lewis v. Lewis (4 Or. Rep., 177). Robinson v. Laurer (40 Pac. Rep., 1012). Trinwith v. Smith (70 Pac. Rep., 816). Schmidtke v. Keller (74 Pac. Rep., 222). Kilgore v. Carmichael (72 Pac. Rep., 637). Johnson v. Tomlinson (68 Pac. Rep., 406). Carlisle v. Sloan (75 Pac. Rep., 217). Cristenson v. Simmons (82 Pac. Rep., 805).

Pleadings in such action.

SEC. 1309. The complaint in such action shall be sufficient if it appears therefrom that the plaintiff and defendant or defendants are owners of adjacent lands; that there is a controversy or dispute between the parties concerning their boundary or dividing line or lines, and it shall not be necessary to set forth the nature of such dispute or controversy further than that the plaintiff shall describe the boundary or dividing line as he shall claim it to be. The defendant, in his answer, shall set forth the nature of his claim with reference to the location of the line in controversy.

Carter Code, sec. 477; Charlton Code, sec. 477.

Hinchman v. Ripinsky (3 Alaska Rep., 543).

School Dist. v. Price (31 Pac. Rep., 657).

Mode of proceeding thereafter.

SEC. 1310. The mode of proceeding under this act shall be analogous to that of other actions of an equitable nature: *Provided*, At the time of entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested commissioners, one of whom shall be a practical surveyor, and shall direct the commissioners to go upon the lands of the parties and establish and mark out upon the grounds, by proper marks and monuments, the boundary or dividing line as ascertained and determined by the court in its judgment.

Carter Code, sec. 478; Charlton Code, sec. 478.

Robinson v. Laurer (40 Pac. Rep., 1012).

Vandusen v. Shively (29 Pac. Rep., 76).

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Oath and duties of commissioners.

SEC. 1311. Before entering upon the discharge of their duties the commissioners shall make and file their oath, in writing, to faithfully and impartially perform their duties as such commissioners, and after designating the line by proper marks and monuments, they shall file, in the court and cause, a report of their doings as such commissioners, and the same shall be, when approved or confirmed by the court, a part of the judgment roll in the cause.

Carter Code, sec. 479; Charlton Code, sec. 479.

Their report.

SEC. 1312. The report of the commissioners may be confirmed by the court, upon written motion of either party to such action, whenever it shall appear to the court that the motion was served upon the adverse party two days before the presentation thereof, and that no exceptions have been filed to the report within two days after the service. If exceptions are filed as aforesaid to the report, the exceptions may be heard with the motion to confirm, and the motion may confirm, modify, or set aside the report, as shall seem just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

Carter Code, sec. 480; Charlton Code, sec. 480.

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# CHAPTER FORTY-SEVEN.

## GENERAL PROVISIONS CONCERNING ACTIONS.


| Sec. | Sec. |
|---|---|
| 1313. Lost papers, how supplied. | 1318. Exercise of jurisdiction. |
| 1314. Successive actions. | 1319. When majority of referees may act. |
| 1315. Consolidation of actions. | 1320. Computation of time. |
| 1316. When court has jurisdiction. | |
| 1317. Jurisdiction over corporations. | |


June 6, 1900.
31 Stat. L., 411-412.
Lost papers, how supplied.

SEC. 1313. If an original paper or pleading be lost or withheld by any person, the court or judge thereof may order a verified copy thereof to be filed and used instead of the original.

Carter Code, sec. 481; Charlton Code, sec. 481.

Wolf *v.* Smith (6 Or. Rep., 74). Close *v.* Close (42 Pac. Rep., 128). In re Plunkett's Estate (54 Pac. Rep., 152). Corbett *v.* Bauer (10 Or. Rep. 340). Lund *v.* Ozanne (84 Pac. Rep., 710).

Successive actions.

SEC. 1314. Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arises therefrom.

Carter Code, sec. 482; Charlton Code, sec. 482.

Consolidation of actions.

SEC. 1315. Whenever two or more actions are pending at one time between the same parties and in the same court upon causes which might have been joined, the court may, upon the motion of the defendant, order the same to be consolidated. An action is deemed to be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

Carter Code, sec. 483; Charlton Code, sec. 483.

Dick *v.* Kendall (6 Or. Rep., 167). Day *v.* Holland (15 Pac. Rep., 855). Shirley *v.* Burch (18 Pac. Rep., 351). Neal *v.* Foster (34 Fed Rep., 500).

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When court has jurisdiction.

SEC. 1316. No natural person is subject to the jurisdiction of the district court of the district unless he appear in the court, or be found within the district, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached. But this section is not to be construed to limit the power of the said court to declare a marriage void or a dissolution thereof when the defendant is a nonresident of the district, in the cases provided for in chapter forty-five.

Carter Code, sec. 484; Charlton Code, sec. 484.

Belknap *v.* Charlton (34 Pac. Rep., 758). Myer *v.* Brooke (41 Pac. Rep., 281). Willamette R. E. Co. *v.* Hendricks (42 Pac. Rep., 514). Bank of Colfax *v.* Richardson (54 Pac. Rep., 359).

NOTE.—As to appearance, see sec. 885, chap. 4, ante.
As to service by publication, see sec. 879, chap. 4, ante.
As to how appearance is made, see sec. 1331, chap. 50, post.

Jurisdiction over corporations.

SEC. 1317. No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Carter Code, sec. 485; Charlton Code, sec. 485.

Nowell *v.* Internat. Trust Co. (3 Alaska Rep., 259, 260). Farrell *v.* Ore Gold Co. (49 Pac. Rep., 876). Aldrich *v.* Anchor Coal Co. (32 Pac. Rep., 756). Multnomah L. & B. Co. *v.* Weston B. & B. Co. (99 Pac. Rep., 1046). Cunningham *v.* Klamath Lake R. Co. (101 Pac. Rep., 213).

NOTE.—As to service of summons on, see sec. 878, chap. 4, and sec. 1782, chap. 92, both of this title.

Exercise of jurisdiction.

SEC. 1318. When the court has jurisdiction of the parties it may exercise it in respect to any cause of action, wherever arising, except for the specific recovery of real property situated without the district, or for injury thereto.

Carter Code, sec. 486; Charlton Code, sec. 486.

When majority of referees may act.

SEC. 1319. Whenever there is more than one referee all must meet, but a majority of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

Carter Code, sec. 487; Charlton Code, sec. 487.

Beekman *v.* Jackson County (22 Pac. Rep., 1074). Slater *v.* La Grande L. & T. Co. (72 Pac. Rep., 738). Fish *v.* Vermillion (78 Pac. Rep., 811).

Computation of time.

SEC. 1320. The time within which an act is to be done, as provided in this code, shall be computed by excluding the first day and including the last, unless the last day fall upon a Sunday, Christmas, or other legal holiday, in which case the last day shall also be excluded. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen or which completes the full period required for publication.

Carter Code, sec. 488; Charlton Code, sec. 488.

Grant *v.* Paddock (47 Pac. Rep., 712). Nicklin *v.* Robertson (42 Pac. Rep., 993). Wachsmuth *v.* Routledge (51 Pac. Rep., 443). Poppleton *v.* Nelson (10 Or. Rep., 438). Bellmer *v.* Blessington (68 Pac. Rep., 111). Tilton *v.* Sterling C. & C. Co. (77 Pac. Rep., 758). Boothe *v.* Scriber (87 Pac. Rep., 887). Mulkey *v.* Day (89 Pac. Rep., 957). McCabe *v.* Duprey Tanning Co. *v.* Justice's Court (102 Pac. Rep., 795).

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# CHAPTER FORTY-EIGHT.

## OF OFFERS TO COMPROMISE AND THE INSPECTION OF WRITINGS.

Sec.
1321. Offers to compromise, how accepted and effect thereof.
1322. Order for the inspection of papers.

June 6, 1900.
31 Stat. L., 412.
Offers to compromise, how accepted and effect thereof.

SEC. 1321. The defendant may, at any time before trial, serve upon the plaintiff and offer to allow judgment to be given against him for the sum, or the property, or to the effect therein specified. If the plaintiff accept the offer, he shall, by himself or attorney, indorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon him; and thereupon judgment shall be given accordingly, as in case of a confession.

If the offer be not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs accruing after the service of the notice of the offer, but the defendant shall recover of him costs and disbursements from the time of such service.

Carter Code, sec. 489; Charlton Code, sec. 489.

Wells *v.* Marcus (12 Pac. Rep., 84). Hammond *v.* N. P. Co. (31 Pac. Rep., 299). Savage *v.* Savage (8 Pac. Rep., 754). Multnomah County *v.* Title Guar. & Tr. Co. (80 Pac. Rep., 400). Young *v.* Stickney (79 Pac. Rep., 345).

Order for the inspection of papers.

SEC. 1322. The court, or judge thereof, while an action is pending, may order either party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence or matters relating to the merits of the action, or the defense therein. If obedience to the order be neglected or refused, the court may exclude the book, document, or paper from being given in evidence, or, if wanted as evidence by the party applying therefor, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party so neglecting or refusing as for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, documents, or papers when he is examined as a witness.

Carter Code, sec. 490; Charlton Code, sec. 490.

Davis *v.* Hofer (63 Pac. Rep., 56). Fagan *v.* Wiley (90 Pac. Rep., 910). Hemple *v.* Raymond (143 Pac. Rep., 797). McCabe Duprey Tanning Co. *v.* Justice's Court (102 Pac. Rep., 795).

# CHAPTER FORTY-NINE.

## OF MOTIONS AND ORDERS.

Sec.
1323. Order and motion, definition of.
1324. Motions, to whom and where made.
1325. Notice of motion, time of, and when necessary.
1326. Application refused not to be repeated.

June 6, 1900.
31 Stat. L., 412–413.
Order and motion, definition of.

SEC. 1323. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Carter Code, sec. 491; Charlton Code, sec. 491.

U. S. *v.* Myers (2 Alaska Rep., 158). Douglas County Road Commr. *v.* Douglas County (5 Or. Rep., 406). Dahlstrom *v.* Portland Min. Co. (85 Pac. Rep., 916).

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Motions, to whom and where made.

SEC. 1324. Motions shall be made to the court or judge, as provided in other parts of this code. They shall be made at the place where the action is triable, except when made to a judge of the court before whom the action is pending and without notice, in which case an order may be made by such judge in any part of the district.

Carter Code, sec. 492; Charlton Code, sec. 492.

McGrath *v.* Valentine (167 Fed. Rep., 473; 93 C. C. A., 109). Hinds *v.* Tanana Mines R. Co. (3 Alaska Rep., 377).

Notice of motion, time of, and when necessary.

SEC. 1325. When a notice of a motion is necessary, it shall be served twenty days before the time appointed for the hearing; but the court, or judge thereof, may prescribe, by order indorsed upon the notice, a shorter time. Notice of a motion is not necessary, except when this code requires it, or when directed by the court or judge in pursuance thereof.

Carter Code, sec. 493; Charlton Code, sec. 493.

Bush *v.* Geisey (19 Pac. Rep., 122). Hosford *v.* Logus (11 Pac. Rep., 900). Chemin *v.* East Portland (24 Pac. Rep., 1038).

Application refused not to be repeated.

SEC. 1326. If an application for an order, made to a judge of the court in which the action or proceeding is pending, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge. A violation of this section is punishable as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by the court, or judge thereof, in which the action or proceeding is pending.

Carter Code, sec. 494; Charlton Code, sec. 494.

Reid *v.* Fillmore (73 Pac. Rep., 849).

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# CHAPTER FIFTY.

## OF NOTICE AND THE SERVICE AND FILING OF PAPERS.


Sec.
1327. Notices to be in writing.
1328. Notices and other papers, how served and upon whom.
1329. When service may be made by mail; time allowed for distance.
1330. How copy deposited and when service deemed to be made.
1331. Appearance, how made; defendant not to be heard before appearance.
1332. When party absent from the district; when service to be made on attorney.
1333. Foregoing provisions not to apply to summons.
1334. Notice is valid, though defective in form.
1335. Filing of papers.


June 6, 1900.
31 Stat. L., 413-414.
Notices to be in writing.

SEC. 1327. Notices shall be in writing, and notices and other papers shall be served on the party or attorney in the manner prescribed in this chapter where not otherwise provided by this code.

Carter Code, sec. 495; Charlton Code, sec. 495.

Lewis & Dryden Print *v.* Reeves (38 Pac. Rep., 622). Amort *v.* School Dist. No. 80 (87 Pac. Rep., 761).

Notices and other papers, how served and upon whom.

SEC. 1328. The service or deposit in the post office, when served by mail, may be made by any person other than the party himself. The proof of service shall be the same as proof of service of a summons, and shall be returned with the original notice, or other paper of which service is made, at the time and place therein prescribed for

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the hearing or other proceeding to be had thereon. The service may be personal by delivery of a copy of the notice or other paper to the party or attorney on whom the service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the copy with his clerk therein, or with the person having charge thereof; or when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office, or if it be not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

Second. If upon a party, it may be made by leaving the copy at his residence between the hours of six in the morning and nine in the evening with some person of suitable age and discretion.

Carter Code, sec. 496; Charlton Code, sec. 496.

*Admission of service*: Read *v.* Benton County (10 Oreg. Rep., 155). Moffitt *v.* McGrath (36 Pac. Rep., 578). Lillienthal *v.* Caravita (15 Pac. Rep., 280).

*Service of notice*: Williams *v.* Schmidt (13 Pac. Rep., 505). La Grand Nat. Bank *v.* Blum (41 Pac. Rep., 659). Lindley *v.* Wallace (2 Or. Rep., 204). Rees *v.* Rees (7 Or. Rep., 78). Herman *v.* Hutchinson (52 Pac. Rep., 480). Barbre *v.* Goodale (43 Pac. Rep., 378). Weaver *v.* S. P. Co. (48 Pac. Rep., 171). Byers *v.* Cook (10 Pac. Rep., 417). Bennett *v.* Minot (39 Pac. Rep., 997; 44 Pac. Rep., 283). Walling *v.* Trevor (66 Pac. Rep., 234). Amort *v.* School Dist. No. 80 (87 Pac. Rep., 761).

NOTE.—As to service by publication, see sec. 884, chap 4, ante.

When service may be made by mail; time allowed for distance.

SEC. 1329. Service by mail may be made when the person for whom the service is made and the person on whom it is made reside in different places, between which there is a communication by mail, adding one day to the time of service for every twenty miles of distance between the place of deposit and the place of address.

Carter Code, sec. 497; Charlton Code, sec. 497.
Fisk *v.* Hunt (54 Pac. Rep., 660).

How copy deposited and when service deemed to be made.

SEC. 1330. In case of service by mail the copy must be deposited in the post office, addressed to the person on whom it is to be served at his place of residence, and the postage paid. The service shall be deemed to be made on the first day after the deposit in the post office that the mail leaves the place of deposit for the place of the address, and not otherwise.

Carter Code, sec. 498; Charlton Code, sec. 498.

Appearance, how made; defendant not to be heard before appearance.

SEC. 1331. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, and until he does so appear he shall not be heard in such action or in any proceeding pertaining thereto, except the giving of the undertakings allowed to the defendant in the provisional remedies of arrest, attachment, and the delivery of personal property. When the defendant has not appeared, notice of a motion or other proceeding need not be served upon him, unless he be imprisoned for want of bail, or unless directed by the court, or judge thereof, in pursuance of this title.

Carter Code, sec. 499; Charlton Code, sec. 499.

Carter *v.* Koshland (8 Pac. Rep., 556). Wilson *v.* Blakesley (13 Pac. Rep., 665). Whipple *v.* S. P. Co. (55 Pac. Rep., 975). Multnomah L. & B. Co. *v.* Weston B. & B. Co. (99 Pac. Rep., 1046).

NOTE.—As to voluntary appearance, see sec. 885, chap. 4, ante, and the cases cited thereunder.

When party absent from the district; when service to be made on attorney.

SEC. 1332. When a party is absent from the District and has no attorney in the action, service may be made by mail if his residence be known; if not known, on the clerk for him. When a party,

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whether absent or not from the district, has an attorney in the action, service of notice or other papers shall be made upon the attorney.

Carter Code, sec. 500; Charlton Code, sec. 500.

Lindley *v.* Wallace (2 Or. Rep., 203). Rees *v.* Rees (7 Or. Rep., 78). Lewis & Dryden Print Co. *v.* Reeves (38 Pac. Rep., 662). Byers *v.* Cook (10 Pac. Rep., 417). Butler *v.* Smith (25 Pac. Rep., 381). Wheeler *v.* Cragin (38 Pac. Rep., 308). Bennett *v.* Minott (39 Pac. Rep., 997). Neuberger *v.* Boyce (45 Pac. Rep., 908). Longcreek Bldg. Assn. *v.* State Ins. Co. (46 Pac. Rep., 466). Holt *v.* Sidelman (54 Pac. Rep., 279).

Foregoing provisions not to apply to summons.

SEC. 1333. The foregoing provisions do not apply to the service of a summons or other process, nor so much thereof as allows service to be made of any notice or other paper to bring a party into contempt, otherwise than upon such party personally.

Carter Code, sec. 501; Charlton Code, sec. 501.

Notice is valid, though defective in form.

SEC. 1334. A notice or other paper is valid and effectual, although defective either in respect to the title of the action in which it is made, or the name of the court or the parties, if it intelligently refer to such action.

Carter Code, sec. 502; Charlton Code, sec. 502.

Morehouse *v.* Cox (12 Pac. Rep., 71). Lancaster *v.* McDonald (12 Pac. Rep., 374).

Filing of papers.

SEC. 1335. All undertakings, affidavits, or other papers required by or provided for in this code shall be filed with the clerk, except when this code otherwise specially provides. A pleading or paper shall be filed by delivering the same to the clerk at his office, who shall indorse upon it the day of the month and the year, and subscribe his name thereto. The clerk shall not be required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is intelligibly indorsed on the back of it, or unless the contents thereof can be read by a person of ordinary skill.

Carter Code, sec. 503; Charlton Code, sec. 503.

McDonald *v.* Cruzen (2 Or. Rep., 258). Habighorst & Co. *v.* Keinath (73 Pac. Rep., 1018).

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# CHAPTER FIFTY-ONE.

## OF APPEALS AND WRITS OF ERROR.


Sec.
1336. Appeals and writs of error, direct from Alaska district court.
1337. Review of decisions of Alaska district court.
1338. When may be taken.
1339. From what an appeal may be taken.
1339½. Hearings of appeal, from district court.
1339¾. Transfer to, from circuit court of appeals, ninth circuit, of certain appeals from district court.
1340. Laws regulating procedure and practice on appeal.


Mar. 4, 1911.

36 Stat. L., 1158. Appeals and writs of error, direct from Alaska district court. Vol. 31, p. 414.

SEC. 1336. Appeals and writs of error may be taken and prosecuted from final judgments and decrees of the district court for the District of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Such writs of error and appeal shall be taken within the same time, in the same manner, and under

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the same regulations as writs of error and appeals are taken from the district courts to the Supreme Court.

NOTE.—This section amends sec. 504 Carter, and 504 Charlton.

*Power to award appeal*: In re McKenzie (180 U. S. Rep., 536; 1 Alaska Rep., 694). Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 697). Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 2 Alaska Rep., 643).

*From what appeal lies*: In re McKenzie (180 U. S. Rep., 536; 1 Alaska Rep., 694). Miocene Ditch Co. *v.* Moore (150 Fed. Rep., 483; 80 C. C. A., 301). Miocene Ditch *v.* Campion Min. & Trans. Co. (150 Fed. Rep., 483; 80 C. C. A., 301). Leak *v.* Leak (156 Fed. Rep., 473, 474; 84 C. C. A., 283).

*Admiralty*: The *Coquitlam* (77 Fed. Rep., 744; 23 C. C. A., 438; 1 Alaska Rep., 689). The *Coquitlam* (163 U. S. Rep., 346; 1 Alaska Rep., 695). Schooner *Silvia Handy v.* U. S. (143 U. S. Rep., 513; 1 Alaska Rep., 695). The *Fideliter* (1 Saw. Rep., 153; 1 Alaska Rep., 697). Ex parte Cooper (143 U. S. Rep., 472; 1 Alaska Rep., 701). U. S. *v.* Mosley (8 Fed. Rep., 688; 1 Alaska Rep., 689). The *Oregon* (116 Fed. Rep., 482; 53 C. C. A., 650; 1 Alaska Rep., 689).

*Value of subject matter*: Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 696). Decker *v.* Williams (73 Fed. Rep., 308; 1 Alaska Rep., 698). Thorp *v.* Bonnifield (177 U. S., 15; 1 Alaska Rep., 698).

*Generally*: Shields *v.* Mongollan Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 665). Nelson *v.* Meehan (155 Fed. Rep., 1; 83 C. C. A., 597). Gilmore *v.* McBride (156 Fed. Rep., 464). J. P. Jorgenson Co. *v.* Rapp (155 Fed. Rep., 732). Mitchell *v.* Porter (194 Fed. Rep., 486).

Mar. 4, 1911.
36 Stat. L., 1134.
Review of decisions of Alaska district court.
Vol. 30, p. 1307.
*Post*, p. 1157.

SEC. 1337. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section thirteen hundred and thirty-six, in which the amount involved or the value of the subject matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals.

Certifying questions to Supreme Court.

NOTE.—The first paragraph of this section is found in the last paragraph of sec. 504 Carter, and 504 Charlton.

The last paragraph of this section is found in sec. 505 Carter, and 505 Charlton.

June 6, 1900.
31 Stat. L., 415.
When may be taken.

SEC. 1338. No. appeal or writ of error by which any final order or judgment may be reviewed under the provisions of this act shall be taken or sued out except within one year after the entry of the order or judgment sought to be reviewed.

Carter Code, sec. 506; Charlton Code, sec. 506.

Woods *v.* Beaton (1 Alaska Rep., 345).

From what an appeal may be taken.
Ibid.

SEC. 1339. An appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction, made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause in which such interlocutory order was made shall not be stayed during the pendency of such appeal, unless otherwise ordered by the district court.

Carter Code, sec. 507; Charlton Code, sec. 507.

Lane *v.* Jordan (116 Fed. Rep., 623; 54 C. C. A., 79; 1 Alaska Rep., 696).

J. P. Jorgenson Co. *v.* Rapp (157 Fed. Rep., 732; 85 C. C. A., 364).

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Jan. 11, 1909. [H. R. 13649.]
[Public, No. 188.]
35 Stat. L., 585.
Alaska.
Appeals, etc., from district court of.
Hearings at San Francisco, Cal., Portland, Oreg., Seattle, Wash.
*Proviso.*
Attorneys to designate place of hearing.

SEC. 1339¼. That hereafter all appeals, writs of error, and other cases coming from the district court for the District of Alaska to the circuit court of appeals for the ninth circuit shall be entered upon the docket and heard at San Francisco, in the State of California, or at Portland, in the State of Oregon, or at Seattle, in the State of Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided, however*, That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there.

NOTE.—This section has been adopted also Mar. 4, 1911 (36 Stat. L., 1135).

July 8, 1898.
30 Stat. L., 728, 729.
Supreme Court.
Transfer to, from circuit court of appeals, ninth circuit, of certain appeals from district court of Alaska.

SEC. 1339¾. That all cases, civil and criminal, filed on appeal from the District Court of the United States for the District of Alaska in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and pending on appeal therein on and prior to the thirtieth day of December, eighteen hundred and ninety-seven, of which the Supreme Court of the United States would have had jurisdiction under the then existing law, if a proper appeal had been taken thereto at the time said cases were filed on appeal in said circuit court of appeals be, and the same are, deemed and treated as regularly filed on appeal in the Supreme Court of the United States as of the date when filed in said circuit court of appeals. The clerk of said circuit court of appeals is directed to transmit to the Supreme Court of the United States, as soon as practicable, the records of such cases, and the clerk of said Supreme Court is directed to receive and file the same for hearing and determination in the Supreme Court of the United States when regularly reached on the docket, subject to any rules made or to be made by said court which may be applicable.

Transmission of records, etc.

Carlton Code, p. 63.

June 6, 1900.
31 Stat. L., 415.
Laws regulating procedure and practice on appeal.

SEC. 1340. All provisions of law now in force regulating the procedure and practice in cases brought by appeal or writ of error to the Supreme Court of the United States or to the United States Circuit Court of Appeals for the Ninth Circuit, except in so far as the same may be inconsistent with any provision of this act, shall regulate the procedure and practice in cases brought to the courts, respectively, from the district court for the District of Alaska. The provisions of this chapter shall apply to all cases pending in the district court of Alaska at the time this act takes effect.

Carter Code, sec. 508; Carlton Code, sec. 508.

Alaska Treadwell G. M. Co. *v.* Cheney (162 Fed. Rep., 593; 89 C. C. A., 351). Leber *v.* U. S. (170 Fed. Rep., 881; 96 C. C. A., 57). Corcoran *v.* Kostrometinoff (164 Fed. Rep., 685; 91 C. C. A., 619). McCloskey *v.* Pac. Coast Co. (160 Fed. Rep., 794; 87 C. C. A., 568). James *v.* Wild Goose Min. & Tr. Co. (143 Fed. Rep., 868; 75 C. C. A., 76). Nowell *v.* Internat. Tr. Co. (169 Fed. Rep., 497; 94 C. C. A., 589). Bush *v.* Pioneer Min. Co. (154 Fed. Rep., 480; 83 C. C. A., 320). Alaska Pac. R. & Ter. Co. *v.* Copper Riv. & NW. R. Co. (160 Fed. Rep., 862; 87 C. C. A., 666). Leedy *v.* Lehfeldt (162 Fed. Rep., 304; 89 C. C. A., 184). Gilmore *v.* McBride (156 Fed. Rep., 464; 84 C. C. A., 274). Lynch's Admnr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 9). In re guardianship of Corcoran (3 Alaska Rep., 263). Cascaden *v.* Dunbar (3 Alaska Rep., 671).

*Stare decisis*: Kohn *v.* McKinnon (90 Fed. Rep., 623; 1 Alaska Rep., 723).

*Matters within discretion of trial judge*: Ebner *v.* Zimmerly (118 Fed. Rep., 518; 55 C. C. A., 430; 1 Alaska Rep., 697). Walton *v.* Wild Goose Min. & Tr. Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 751). Shoup *v.* Marks (128 Fed. Rep., 32; 62 C. C. A., 540; 2 Alaska Rep., 752). Vogel *v.* Warsing (146 Fed. Rep., 949; 77 C. C. A., 199).

*Instructions*: A requested charge is properly refused where covered by charges given: Corbus *v.* Leonard (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 831).

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*Instructions desired must be asked for*: Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 700).

*Assignments of error based on refusal of instruction in equity suits can not be entertained on appeal*: McKinley Creek Min. Co. *v.* United Alaska Min. Co. (1 Alaska Rep., 701).

*See also*: Bird *v.* U. S. (180 U. S. Rep., 356; 1 Alaska Rep., 728). Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 728). Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 728).

*Duty of counsel for plaintiff in error to furnish complete transcript of record*: Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A., 459; 2 Alaska Rep., 643). Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 1 Alaska Rep., 643).

*Points of alleged error must be particularly pointed out*: Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 644).

*Objection not raised in trial court can not be raised for first time on appeal*: Ames *v.* Farrelly (121 Fed. Rep., 820; 58 C. C. A., 258; 2 Alaska Rep., 645).

*Technical objections must be specified in assignment of error*: Piper *v.* Cashell (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 645).

*The record must show the error*: Hemple *v.* Raymond (144 Fed. Rep., 797; 75 C. C. A., 526).

*Must affirmatively appear that error was prejudicial*: Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 697).

*On appeal all questions properly preserved are open to determination; on prohibition the inquiry is confined to matters of jurisdiction*: Ex parte Cooper (143 U. S. Rep., 472; 1 Alaska Rep., 698).

*Motion of nonsuit waived by introduction of evidence; after it has been overruled, ruling not assignable as error in appellate court*: Walton *v.* Wild Goose Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 645). Fulkerson *v.* Chesna Min Co (122 Fed. Rep., 782; 58 C. C. A., 582; 2 Alaska Rep., 751).

*Appellate court will not consider bill of exceptions not signed by the trial judge*: Maloney *v.* Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 743). Woods *v.* Beaton (1 Alaska Rep., 344; 2 Alaska Rep., 1).

*As to sufficiency of judgment entry*: McKay *v.* Fox (121 Fed. Rep., 487; 57 C. C. A., 439; 2 Alaska Rep., 645).

*As to vacating judgment after appeal*: Marks *v.* Brown, judge (136 Fed. Rep., 168; 69 C. C. A., 80; 2 Alaska Rep., 694).

*Rejection of testimony offered to contradict immaterial testimony with harmless error*: Shoup *v.* Marks (128 Fed. Rep., 32; 62 C. C. A., 540; 2 Alaska Rep., 645).

*Objections should be made in time*: Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 694).

*As to rulings in evidence in equity suits*: Englestad *v.* Dufresne (116 Fed. Rep., 582; 54 C. C. A., 38; 1 Alaska Rep., 699). Kuzek *v.* Magaha (148 Fed. Rep., 618; 78 C. C. A., 465).

*Finding of court on question of fact upon which evidence is conflicting can not be rejected on appeal*: McKinley Creek Min. Co. *v.* Alaska United Min. Co. (1 Alaska Rep., 699).

*Failure to file formal petition for writ of error is defect in form and remedied by R. S., 954, and 26 S. L., 826, 829*: Alaska United G. M. Co. *v.* Keating (116 Fed. Rep., 561; 53 C. C. A., 655; 1 Alaska Rep., 695).

*Where district court has lost jurisdiction by perfecting of appeal it can not reinstate cause*: Rigley *v.* Hayden (1 Alaska Rep., 308).

*Or correct error*: McKay *v.* Neussler (148 Fed. Rep., 86).

*Where appeal allowed from order dissolving injunction but indemnity bond not given within period allowed, held no appeal allowed or taken and court had jurisdiction to enter judgment*: Russell *v.* Dufresne (1 Alaska Rep., 578).

*Where appellee moved to dismiss appeal on ground that cause was one in law, reviewable only by writ of error, held that where appropriate judgment rendered on the pleadings, immaterial whether regarded as at law or in equity*: Madden *v.* McKenzie (144 Fed. Rep., 64; 75 C. C. A., 222).

*Failure to except to prejudicial remarks will not preclude review on appeal where tender made of evidence to cure their effect and refusal to receive same duly excepted to*: Allen *v.* U. S. (115 Fed. Rep., 3; 52 C. C. A., 597; 1 Alaska Rep., 700).

*As to filing assignment of errors*: Moore *v.* Moore (121 Fed. Rep., 737; 58 C. C. A., 19; 2 Alaska Rep., 644). Tyee Consol. Min. Co. *v.* Langstedt (121 Fed. Rep., 709; 58 C. C. A., 129; 2 Alaska Rep., 644).

*Judgment will not be reversed to correct technical defect in pleading where substance would not be materially changed*: Pacey *v.* McKinney (125 Fed. Rep., 675; 60 C. C. A., 365; 2 Alaska Rep., 644).

*Bill of exceptions, signed by successor of judge presiding at trial, held final as to nonproduction of certain evidence*: Alaska Comm. Co. *v.* Dinkelspiel (126 Fed. Rep., 104; 61 C. C. A., 108; 2 Alaska Rep., 645, 724).

*Powers of receivers suspended by supersedeas*: Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 700).

*Where statute requires it should be read to jury and record does not show the statute was not followed or any objection made, error waived, and not assignable as error*: Walton *v.* Wild

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Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 646).

*Where decree on merits dismissing bill and other suits brought between same parties involving same subject matter and likewise dismissed and no appeal taken therefrom, right to review of first decree on the merits, was not lost*: Copper River Min. Co. *v.* McClellan (138 Fed. Rep., 333; 70 C. C. A., 623; 2 Alaska Rep., 646).

*Where supersedeas bond is given pending writ of error in action where redelivery bond had been given and appellate court had no jurisdiction of the writ of error, the liability of the sureties on the attachment bond was merged in the supersedeas bond*: Ebner *v.* Heid (125 Fed. Rep., 680; 60 C. C. A., 370; 2 Alaska Rep., 649).

*Where district court, on dismissal of appeal from justices' court which had been superseded by the giving of an appeal bond, enters judgment as given in court below, case may be taken for review by writ of error to the circuit court of appeals, though the motion to dismiss was based on want of jurisdiction*: Cartier *v.* U. S. (148 Fed. Rep., 804).

*Contempt*: Anderson *v.* Comptois (109 Fed. Rep., 971; 48 C. C. A., 1; 1 Alaska Rep., 712). Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 713). In re Noyes, in re Geary, in re Wood, in re Frost (121 Fed. Rep., 209; 57 C. C. A., 445; 2 Alaska Rep., 658).

*Generally*: Lane *v.* Jordan (116 Fed. Rep., 623; 54 C. C. A., 79; 1 Alaska Rep., 696). Shields *v.* Monogollan Expl. Co. (137 Fed. Rep., 539; 70 C. C. A., 123; 2 Alaska Rep., 665).

*Bill of review*: Jorgenson *v.* Young (136 Fed. Rep., 378; 69 C. C. A., 222; 2 Alaska Rep., 652). In re Sharick (1 Alaska Rep., 398).

*Appellate court has discretionary powers with relation to acting upon a clear error not assigned*: Kelly *v.* McNann (164 Fed. Rep., 369).

*Findings of court in suit in equity must be taken as presumptively correct and will not be disturbed, except for obvious error*: Thorndyke *v.* Alaska Perseverance Co. (164 Fed. Rep., 657; 90 C. C. A., 473).

*Appeal in bankruptcy, when dismissed*: Nazima Trading Co. *v.* Martin (164 Fed. Rep., 838).

# CHAPTER FIFTY-TWO.

## OF COSTS AND DISBURSEMENTS.


Sec.
1341. Costs; compensation of attorney.
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June 6, 1900.

31 Stat. L., 415–418.

Costs; compensation of attorney.

SEC. 1341. The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied, of the parties; but there may be allowed to the prevailing party in the judgment certain sums by way of indemnity for his attorney fees in maintaining the action or defense thereto, which allowances are termed costs.

Carter Code, sec. 509; Charlton Code, sec. 509.

*Generally*: Rader *v.* Barr (61 Pac. Rep., 1027). Wood *v.* Fitzgerald (3 Or. Rep., 569). State *v.* Estees (55 Pac. Rep., 25). Mitchell *v.* Downing (32 Pac. Rep., 394). Hughs *v.* Holman (38 Pac. Rep., 4). Jackson *v.* Siglin (10 Or. Rep., 93). Coffin *v.* Coulson (2 Or. Rep., 205). Cross *v.* Chichester (4 Or. Rep., 114). Burt *v.* Ambrose (4 Pac. Rep., 465). Purvis *v.* Kroner (23 Pac. Rep., 260). Jordan *v.* Lavine (15 Pac. Rep., 281). Carlon *v.* Dickson (12 Pac. Rep., 394).

*Attorney's fees*: Peyser *v.* Cole (4 Pac. Rep., 520). Wilson S. M. Co. *v.* Moreno (6 Saw. Rep., 55). Bank of B. N. A. *v.* Ellis (6 Saw. Rep., 96). Benn *v.* Kutzschan (32 Pac. Rep., 763). Balfour *v.* Davis (12 Pac. Rep., 89). Levins *v.* Briggs (28 Pac. Rep., 15). Comm. Nat. Bank *v.* Davidson (22 Pac. Rep., 517). Kimball *v.* Moir (15 Pac. Rep., 669). Bradfeldt *v.* Cooke (40 Pac. Rep., 1). Cox *v.* Alexander (46 Pac. Rep., 794). Wright *v.* Conservative Inv. Co. (89 Pac. Rep., 387).

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When costs allowed to plaintiff.

SEC. 1342. Costs are allowed, of course, to the plaintiff upon a judgment in the district court in his favor in the following cases:

First. In an action for the recovery of the possession of real property, or where a claim of title or interest in real property, or right to the possession thereof, arises upon the pleadings, or is certified by the court to have come in question upon the trial;

Second. In actions for fines and forfeitures, and the actions provided for in chapters thirty-five and thirty-six of this title;

Third. In an action involving an open mutual account, where it appears to the satisfaction of the court that the sum total of such accounts of both parties exceeds one hundred and fifty dollars;

Fourth. In an action for the recovery of personal property;

Fifth. In an action not hereinbefore specified, for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more.

But in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or breach of promise of marriage, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs and disbursements than damages; and in an action to recover the possession of personal property, if the plaintiff recover property or the value thereof, as established on the trial, and damages for the detention of the same, in all less than fifty dollars, he shall recover no more costs and disbursements than the sum of such value and damages.

Carter Code, sec. 510; Charlton Code, sec. 510.

*Costs*: Nurse *v.* Justus (6 Or. Rep., 75). Burt *v.* Ambrose (4 Pac. Rep., 465). McDonald *v.* Emmons (3 Or. Rep., 475). Phipps *v.* Taylor (16 Pac. Rep., 171). Anderson *v.* Adams (76 Pac. Rep., 16).

*Open mutual account; what is*: Mason *v.* Riner (22 Pac. Rep., 532). Purvis *v.* Kroner (23 Pac. Rep., 260). Hayden *v.* Waymire (10 Or. Rep., 369). Altree *v.* Gregson (67 Pac. Rep., 921).

*Action for real property*: Crossman *v.* Lauder (3 Or. Rep., 495). Bently *v.* Jones (7 Or. Rep., 109). Grant *v.* O. R. & N. Co. (90 Pac. Rep., 1099).

*Other cases*: Lockwood *v.* Hanson (17 Pac. Rep., 575). Rayburn *v.* Hurd (23 Pac. Rep., 669). Mason *v.* Riner (22 Pac. Rep., 532). Stewart *v.* Corbus (13 Pac. Rep., 647). Anderson *v.* Adams (74 Pac. Rep., 215). U. S. Mtg. & Tr. Co. *v.* Willis (69 Pac. Rep., 266).

Costs in several actions on same cause.

SEC. 1343. When several actions shall be prosecuted for the same cause of action, against several parties who might have been joined as defendants in the same action, disbursements shall be allowed the plaintiff in each action if he prevail therein; but costs shall not be allowed such plaintiff in more than one of such actions, which shall be at his election, unless the party or parties prosecuted in such other action or actions shall at the time of the commencement of the previous action have been without the District or secreted therein.

Carter Code, sec. 511; Charlton Code, sec. 511.

Costs, when allowed to defendant.

SEC. 1344. Costs are allowed, of course, to the defendant in the actions mentioned in section thirteen hundred and forty-three unless the plaintiff be entitled to costs therein; and when there are several defendants not united in interest, and making separate defenses by separate answers, costs shall be allowed or not to each of such defendants as if the action were commenced against him separately.

Carter Code, sec. 512; Charlton Code, sec. 512.

Lockwood *v.* Hansen (17 Pac. Rep., 575). Tyler *v.* Trustee (13 Pac. Rep., 329). Anderson *v.* Adams (76 Pac. Rep., 16). Nye *v.* Bill Nye G. M. & M. Co. (80 Pac. Rep., 94). U. S. Mtg. & Tr. Co. *v.* Willis (69 Pac. Rep., 266).

Disbursements, when allowed.

SEC. 1345. A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses,

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the necessary expenses of taking depositions by commission or otherwise, the expense of publication of the summons or notices, and the postage where the same are served by mail, the compensation of referees, and the necessary expense of copying any public record, book, or document used as evidence on the trial.

Carter Code, sec. 513; Charlton Code, sec. 513.

Graeco-Russian Church *v.* Cohan (1 Alaska Rep., 32).

NOTE.—See cases cited under sec. 1349, post, as to legitimate disbursements.

Costs and disbursements in an action of equitable nature.

SEC. 1346. In an action of equitable nature costs and disbursements shall be allowed to a party in whose favor a judgment is given in like manner and amount as in other actions, without reference to the amount recovered or the value of the subject of the action, unless the court otherwise directs.

Carter Code, sec. 514; Charlton Code, sec. 514.

Lovejoy *v.* Chapman (32 Pac. Rep., 687). Cole *v.* Logan (33 Pac. Rep., 568). Fleming *v.* Carson (62 Pac. Rep., 374). Nicklin *v.* Robertson (42 Pac. Rep., 993). Washington Trust Co. *v.* Dunaway (169 Fed. Rep., 37).

NOTE.—And see cases under sec. 1349, post.

Who liable for fees.

SEC. 1347. Every officer, witness, or other person required to do or perform any act or service for any party to any action or proceeding whatever shall be entitled to demand and receive from such party the compensation which the law allows therefor in advance; but a party to any action or proceeding in any court of justice in the district may, at his option, pay the fees of the officers thereof in advance or give such officers an undertaking with sufficient sureties therefor. The costs and disbursements which a party is entitled to recover from another may be collected by the execution to enforce the judgment as a part thereof. The fees secured to the officers of the court, or either of them, by any party to the judgment may be collected by an execution against the property of such party and that of his sureties in the undertaking therefor. Such officers' execution may issue in the name of the clerk as plaintiff in the writ and for the benefit of all officers of the court to whom fees are so due and secured, whenever an execution might issue to enforce the judgment at the instance of the prevailing party therein.

Carter Code, sec. 515; Charlton Code, sec. 515.

Snipes *v.* Beazley (5 Or. Rep., 421).

Washington Trust Co. *v.* Dunaway (169 Fed. Rep., 37).

NOTE.—And see cases cited under sec. 1349, post.

Costs and disbursements, how taxed.

SEC. 1348. Costs and disbursements shall be taxed and allowed by the clerk. No disbursements shall be allowed any party unless he shall file with the clerk within five days from the entry of judgment a statement of the same, which statement must be verified except as to fees of officers. A statement of disbursements may be filed with the clerk at any time after five days, but in such case a copy thereof must be served upon the adverse party. A disbursement which a party is entitled to recover must be taxed, whether the same has been paid or not by such party. The statement of disbursements thus filed, and costs, shall be allowed of course unless the adverse party, within two days from the time allowed to file the same, shall file his objections thereto, stating the particulars of such objections.

Carter Code, sec. 516; Charlton Code, sec. 516.

*Time for filing*: State *v.* Munds (7 Or. Rep., 83). Hislop *v.* Moldenhauer (32 Pac. Rep., 1026). Nicklin *v.* Robertson, 42 Pac. Rep., 993). Eagan *v.* N. A. S. L. & B. Co. (77 Pac. Rep., 392). Basin *v.* Wade (84 Pac. Rep., 387).

*Verification*: Crawford *v.* Abraham (2 Or. Rep., 167). Cross *v.* Chichester (4 Or. Rep., 114). Morris *v.* Rogers (38 Pac. Rep., 931). Hammer *v.* Downing (67 Pac. Rep., 30). Haywood Bros. & Wakefield Co. *v.* Doern-

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becher Mfg. Co. (87 Pac. Rep., 530).
*Bill of costs*: Walker *v.* Goldsmith (17 Pac. Rep., 865). Cross *v.* Chichester (4 Or. Rep., 114). Ferguson *v.* Byers (69 Pac. Rep., 32).
*Objection to bill*: Cross *v.* Chichester (4 Or. Rep., 114). Walker *v.* Goldsmith (17 Pac. Rep., 865). Wilson *v.* Salem (3 Or. Rep., 483). Hammer *v.* Downing (65 Pac. Rep., 990; 67 Pac. Rep., 30). Spencer *v.* Peterson (68 Pac. Rep., 1108). Portland Iron Wks. *v.* Willett (90 Pac. Rep., 1000).
*No objections filed*: Nicklin *v.* Robertson (42 Pac. Rep., 993).

When objections made.

SEC. 1349. When objections are made to the claim for costs and disbursements, the clerk shall forthwith pass upon the same, and indorse upon the verified statement, or append thereto, the charges allowed or disallowed. Any party aggrieved by the decision of the clerk in the allowance of costs or disbursements may appeal from such decision to the court within five days from the date of such decision, by serving a notice of such appeal, and in what particulars, upon the adverse party or his attorney, which appeal shall be heard and determined by such court, or judge thereof, as soon thereafter as convenient.

Appeal.

Carter Code, sec. 517; Charlton Code, sec. 517.

*When objections made*: Crawford *v.* Abraham (2 Or. Rep., 167). Willis *v.* Lance (43 Pac. Rep., 487). Pugh *v.* Good (23 Pac. Rep., 827). Morris *v.* Rogers (38 Pac. Rep., 931). Hammer *v.* Downing (67 Pac. Rep., 30).
*Time of filing amended statement*: Willis *v.* Lance (43 Pac. Rep., 487, 384). Hislop *v.* Moldenhauer (22 Pac. Rep., 126).
*Findings by court*: Willis *v.* Lance (43 Pac. Rep., 384, 487). Thomas *v.* Thomas (33 Pac. Rep., 565).
*Appeal*: Purvis *v.* Kroner (23 Pac. Rep., 260). Elbert *v.* City of Salem (66 Pac. Rep., 233). Hager *v.* Knapp (78 Pac. Rep., 671). Young *v.* Hughs (66 Pac. Rep., 272). Ferguson *v.* Byers (69 Pac. Rep., 32). McFarlane *v.* Cornelius (74 Pac. Rep., 468). Hammer *v.* Downing (67 Pac. Rep., 30). Richardson *v.* Orth (69 Pac. Rep., 455). Haywood Bros. & Wakefield Co. *v.* Doernbercher Mfg. Co. (87 Pac. Rep., 530). Grant *v.* O. R. & N. Co. (90 Pac. Rep., 1099).
*Legitimate costs and disbursements*: Crawford *v.* Abraham (2 Or. Rep., 166). Sugar Pine L. Co. *v.* Garrett (42 Pac. Rep., 129). Perham *v.* Portland El. Co. (53 Pac. Rep., 24). Portland Iron Works *v.* Willett (90 Pac. Rep., 1000).
*Witness fees*: Graeco - Russian Church *v.* Cohan (1 Alaska Rep., 32). Pugh *v.* Good (23 Pac. Rep., 827).
*Fees of officers*: Pugh *v.* Good (23 Pac. Rep., 827). Coleman *v.* Ross (12 Pac. Rep., 648). Howe *v.* Douglas County (3 Or. Rep., 488).
*Keeper's fees*: Mitchell *v.* Downing (32 Pac. Rep., 394). Schneider *v.* Sears (8 Pac. Rep., 841). Hawley *v.* Dawson (18 Pac. Rep., 592). Weiss *v.* Myer (22 Pac. Rep., 1025). Thomas *v.* Thomas (33 Pac. Rep., 565). Rader *v.* Barr (61 Pac. Rep., 1027). Young *v.* Hughs (66 Pac. Rep., 272). White *v.* White (50 Pac. Rep., 801). Elbert *v.* Salem (66 Pac. Rep., 233). Farmers Loan Co. *v.* Or. Pac. R. Co. (48 Pac. Rep., 706; 38 L. R. A., 424).
*Stenographer's fees*: Richardson *v.* Orth (69 Pac. Rep., 455). Haywood Bros. & Wakefield Co. *v.* Doernbercher Mfg. Co. (87 Pac. Rep., 530). Grant *v.* O. R. & N. Co. (90 Pac. Rep., 1099).

Effect of such appeal.

SEC. 1350. Such appeal shall stay the proceedings as to the costs and disbursements to which the appeal is taken or relates, unless the respondent file with the clerk an undertaking, with one or more sureties, to the effect that if the decision of the clerk be reversed or modified he will make such restitution as the court or judge may direct. The sufficiency of the sureties in the undertaking may be excepted to by the appellant, and they be required to justify in like manner and with like effect as in an ordinary undertaking for an appeal.

Carter Code, sec. 518; Charlton Code, sec. 518.

Fees of referees

SEC. 1351. The fees of referees shall be four dollars per day to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rates shall be allowed.

Carter Code, sec. 519; Charlton Code, sec. 519.

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Costs on postponement, etc.

SEC. 1352. Upon an application to postpone a trial, the payment to the adverse party of a sum, not exceeding ten dollars, as costs may be imposed by the court as a condition of granting the postponement; and in all cases where this code authorizes a court or judge to allow a party to do any act in an action or proceeding upon terms, such court or judge may, as a condition of such allowance, impose upon such party the payment of a like sum as costs.

Carter Code, sec. 520; Charlton Code, sec. 520.

Plea of tender and effect as to costs.

SEC. 1353. When in any action for the recovery of money or damages only the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause of action, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender be found true, and the plaintiff do not recover a greater sum than the amount so tendered, he shall not recover costs off the defendant, but the defendant shall recover them off him.

Carter Code, sec. 521; Charlton Code, sec. 521.

*Acts constituting*: Jacobs *v.* Oran (48 Pac. Rep., 431). Welsh *v.* City of Astoria (33 Pac. Rep., 66). Dechenbach *v.* Rima (93 Pac. Rep., 464).

*Proof of tender*: Jacobs *v.* Oran (48 Pac. Rep., 431).

Guardian of an infant plaintiff liable.

SEC. 1354. When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, as if he were the actual plaintiff in such action, and payment thereof may be enforced against him accordingly.

Carter Code, sec. 522; Charlton Code, sec. 522.

Costs where person sues or defends in the right of another.

SEC. 1355. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute to prosecute or defend therein, costs shall be recovered as in ordinary cases, but such costs shall only be chargeable upon or collected off the estate, fund, or party represented, unless the court or judge thereof shall order the same to be recovered off the plaintiff or defendant personally for mismanagement or bad faith in such action or the defense thereto.

Carter Code, sec. 523; Charlton Code, sec. 523.
De Bow *v.* Wollenberg (96 Pac. Rep., 536).

Costs on review of inferior court.

SEC. 1356. When the decision of any officer, tribunal, or court of inferior jurisdiction is brought before a court for review, such review shall, for all the purposes of costs or disbursements, be deemed an appeal to such court upon errors in law, and costs therein shall be allowed and recovered accordingly.

Carter Code, sec. 524; Charlton Code, sec. 524.
State *v.* Estees (55 Pac. Rep., 25).

Costs in certain cases.

SEC. 1357. In all actions prosecuted or defended in the name and for the use of any public corporation in the district the public corporation shall be liable for and may recover costs in like manner and with like effect as in the case of natural persons. When the action is upon the information of any natural person, he shall be liable in the first instance for the defendant's costs; and such costs shall not be recovered from the United States until after execution issued therefor against such person and returned unsatisfied in whole or in part.

Carter Code, sec. 525; Charlton Code, sec. 525.

Eisen *v.* Multnomah County (49 Pac. Rep., 730). McCall *v.* Marion County (73 Pac. Rep., 1030; 75 Pac. Rep., 140).

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Security for costs.

SEC. 1358. The attorney of a plaintiff who resides out of the district, or is a foreign corporation, against whom costs are adjudged in favor of the defendant, is liable to such defendant therefor; and if he neglect to pay the same upon the information of such defendant, shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action, or at any time thereafter before judgment, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

Carter Code, sec. 526; Charlton Code, sec. 526.

Same subject.

SEC. 1359. The sureties in such undertaking shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than two hundred dollars, in like manner and with like effect as such sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired, or if excepted to, until they be found sufficient, the attorney is liable as if no undertaking had been given. A deposit of two hundred dollars, or other sum which the court or judge may direct, with the clerk may be made in lieu of such undertaking.

Carter Code, sec. 527; Charlton Code, sec. 527.

Costs on motion, etc.

SEC. 1360. A sum not exceeding five dollars as costs may be allowed to the prevailing party on a motion, in the discretion of the court, and may be absolute or directed to abide the event of the action. In any action or proceeding as to which the allowance and recovery of costs may not be provided for in this title, costs may be allowed or not, according to the measure herein prescribed, and apportioned among the parties, in the discretion of the court.

Carter Code, sec. 528; Charlton Code, sec. 528.

## CHAPTER FIFTY-THREE.

### OF THE RECORDS AND FILES OF COURT.


Sec.
1361. Records of court, what constitute.
1362. Register, how kept.
1363. Journal, what to be entered therein.
1364. Judgment docket, how arranged.
1365. Execution docket, how kept.
1366. Fee book, what to be entered therein.
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1368. Jury book, how kept.
1369. Files of the court, what are.
1370. Custody of the records and files.
1371. Search and examination of records and files.


June 6, 1900.
31 Stat. L., 418–419.
Records of court, what constitute.

SEC. 1361. The records of the district court are a register, journal, judgment docket, execution docket, fee book, jury book, and final record.

Carter Code, sec. 529; Charlton Code, sec. 529.

Dickson *v.* Back (51 Pac. Rep., 727).
Western Sav. Co. *v.* Gurrey (65 Pac. Rep., 360).

Register, how kept.

SEC. 1362. The register is a book wherein the clerk shall enter, by its title, every action or proceeding commenced in, or transferred or appealed to, the court whereof he is clerk, according to the date of



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its commencement, transfer, or appeal; and thereafter, until the entry of judgment, note therein, according to the date thereof, the filing or return of any paper or process, or the making of any order, rule, or other direction in or concerning such action or proceeding.

Carter Code, sec. 530; Charlton Code, sec. 530.

Journal, what to be entered therein.

SEC. 1363. The journal is a book wherein the clerk shall enter the proceedings of the court during term time, and such proceedings in vacation as this code specially directs.

Carter Code, sec. 531; Charlton Code, sec. 531.

Summers *v.* Geer (85 Pac. Rep., 513).

Judgment, docket, how arranged.

SEC. 1364. The judgment docket is a book wherein the judgments are docketed, as elsewhere provided in this code. Each page thereof shall be divided into eight columns, and headed as follows: Judgment debtors; Judgment creditors; Amount of judgment; Date of entry in journal; When docketed; Appeal, when taken; Decision on appeal; Satisfaction when entered.

Carter Code, sec. 532; Charlton Code, sec. 532.

Hutchinson *v.* Gorham (61 Pac. Rep., 431). Western Sav. Co. *v.* Gurrey (65 Pac. Rep., 360). De Lashmutt *v.* Selwood (10 Or. Rep., 324). Budd *v.* Gallier (89 Pac. Rep., 638).

Execution docket, how kept.

SEC. 1365. The execution docket is a book wherein the clerk shall note, under the title of every cause, the issue and return of execution, and generally the filing or return of any paper or process, or the making of any order, rule, or other direction therein, from and after the entry of judgment or decree until satisfaction or performance thereof.

Carter Code, sec, 533; Charlton Code, sec. 533.

Fee book, what to be entered therein.

SEC. 1366. The fee book is one wherein the clerk shall enter, under the title of every cause, against the party to which the service is rendered, the clerk's fees earned, and received or not received, and none other, except as specially directed by this code.

Carter Code, sec. 534; Charlton Code, sec. 534.

Final record, what to be recorded therein.

SEC. 1367. The final record is a book wherein the clerk shall record the papers, pleadings, and proceedings in a cause, as elsewhere provided in this code.

Carter Code, sec. 535; Charlton Code, sec. 535.

Jury book, how kept.

SEC. 1368. The jury book is one wherein the clerk shall enter the names of the persons attending upon the court at a particular term as grand or trial jurors, the time of the attendance of each, and when discharged or excused, and the amount of fees and mileage earned by each.

Carter Code, sec. 536; Charlton Code, sec. 536.

Files of the court, what are.

SEC. 1369. The files of the court are all papers or process filed with or by the clerk of the court in any action or proceeding therein or before the judge thereof.

Carter Code, sec. 537; Charlton Code, sec. 537.

Custody of the records and files.

SEC. 1370. The records and files of the court are to be kept in the clerk's office in the custody of the clerk, and he is responsible for them. They shall not be taken out of the office by anyone, except by the judge of the court, or an attorney thereof when allowed by special order of the court or judge, or some general rule therefor prescribed by the court and entered in the journal.

Carter Code, sec. 538; Charlton Code, sec. 538.

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SEC. 1371. Whenever requested the clerk, upon being tendered legal fees therefor, shall furnish to any person a certified copy of any portion of such records or files, and no person other than such clerk is entitled to make such copy or to the use of the records or files for such purposes. Whenever requested the clerk shall search such records and files and give a certificate thereof according to the nature of the inquiry.

Search and examination of records and files.

Carter Code, sec. 539; Charlton Code, sec. 539.

## CHAPTER FIFTY-FOUR.

### GENERAL PROVISIONS CONCERNING SPECIAL PROCEEDINGS.

Sec.
1372. Parties to special proceedings, how designated.
1373. Judgments, orders, and motions.

SEC. 1372. The party prosecuting a writ of review, writ of mandamus, writ of habeas corpus, or a proceeding for contempt shall be known as the plaintiff, and the adverse party as the defendant.

June 6, 1900.
31 Stat. L., 419.
Parties to special proceedings, how designated.

Carter Code, sec. 540; Charlton Code, sec. 540.

Farrow *v.* Nevin (75 Pac. Rep., 711).

SEC. 1373. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definition of a motion and an order in an action are applicable to similar acts in a special proceeding.

Judgments, orders, and motions.

Carter Code, sec. 541; Charlton Code, sec. 541.

## CHAPTER FIFTY-FIVE.

### OF THE WRIT OF REVIEW.

Sec.
1374. Writ of certiorari to be known as writ of review.
1375. Who may prosecute.
1376. By whom allowed and how applied for.
1377. When allowed.
1378. Undertaking of plaintiff.
1379. To whom directed.
1380. Stay of proceedings; when returnable.
1381. When and by whom writ issued; how served.
1382. Incomplete return; limitation of writ.
1383. Power of court to review.

SEC. 1374. The writ formerly known as the writ of certiorari is known in this title as the writ of review.

June 6, 1900.
31 Stat. L., 420.
Writ of certiorari to be known as writ of review.

Carter Code, sec. 542; Charlton Code, sec. 542.

Moore *v.* Rennick (1 Alaska Rep., 173). Gibson *v.* Langdon (2 Alaska Rep., 166). Miocene Ditch Co. *v.* Moore, Judge (150 Fed. Rep., 483). Miocene Ditch Co. *v.* Campion M. & T. Co. (150 Fed. Rep., 483). Hall *v.* Dunn (97 Pac. Rep., 811). McAnish *v.* Grant (74 Pac. Rep., 386). O. R. & N. Co. *v.* Umatilla County (81 Pac. Rep., 352).

SEC. 1375. Any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors therein as in this chapter prescribed. Upon a review, the court may review any intermediate order involving the merits necessarily affecting the decision or determination sought to be reviewed.

Who may prosecute.

Carter Code, sec. 543; Charlton Code, sec. 543.

Fisher *v.* Union County (72 Pac. Rep., 797). Roper *v.* Dunn (99 Pac. Rep., 889).

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By whom allowed and how applied for.

SEC. 1376. The writ shall be allowed by the district court or judge thereof, upon the petition of the plaintiff, describing the decision or determination sought to be reviewed with convenient certainty, and setting forth the errors alleged to have been committed therein. Such petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney of the court, to the effect that he had examined the process or proceeding and the decision or determination therein, and that the same is erroneous, as alleged in the petition.

Carter Code, sec. 544; Charlton Code, sec. 544.

Farrow *v.* Nevin (75 Pac. Rep., 711). Ferguson *v.* Byers (67 Pac. Rep., 1115). Fisher *v.* Union County (72 Pac. Rep., 797). Gaston *v.* City of Portland (84 Pac. Rep., 1040). Curran *v.* State (99 Pac. Rep., 420). White *v.* Brown (101 Pac. Rep., 900). Elmore Pkg. Co. *v.* Tillamook Co. (105 Pac. Rep., 898).

When allowed.

SEC. 1377. The writ shall be allowed in all cases where there is no appeal or other plain, speedy, and adequate remedy, and where the inferior court, officer, or tribunal in the exercise of judicial functions appears to have exercised such functions erroneously, or to have exceeded it or his jurisdiction, to the injury of some substantial right of the plaintiff.

Carter Code, sec. 545; Charlton Code, sec. 545.

*Generally*: Evans *v.* Christian (4 Or. Rep., 375). Seller *v.* Corvallis (5 Or. Rep., 273). Golden Gate H. M. Co. *v.* Supreme Ct. (65 Calif. Rep., 187). Slavonic M. B. A. *v.* Sup. Ct. (65 Pac. Rep., 500). Canyonville & G. R. Co. *v.* Douglas County (5 Or. Rep., 281). Douglas County R. Co. *v.* Douglas County (6 Or. Rep., 299). Poppleton *v.* Yam Hill County (8 Or. Rep., 339). Adams *v.* Kelly (74 Pac. Rep., 399). Farrow *v.* Nevin (75 Pac. Rep., 711). White *v.* Mears (74 Pac. Rep., 931). Ferguson *v.* Byers (67 Pac. Rep., 1115). Wong Sing *v.* City of Independence (83 Pac. Rep., 387). Shaw *v.* Hemphill (86 Pac. Rep., 372). Flagg *v.* Columbia County (94 Pac. Rep., 184). Holmes *v.* Cole (94 Pac. Rep., 964).

*Lies when*: Moore *v.* Rennick (1 Alaska Rep., 173). Gibson *v.* Langdon (2 Alaska Rep., 166). Hill *v.* State (32 Pac. Rep., 160). Smith *v.* Portland (35 Pac. Rep., 665). Rhea *v.* Umatilla County (2 Or. Rep., 298). Union County *v.* Slocum (17 Pac. Rep., 876). O. & W. Mtg. & Sav. Bnk. *v.* Jordan (17 Pac. Rep., 621). Poppleton *v.* Yam Hill County (8 Or. Rep., 338). Garnsey *v.* County Ct. (54 Pac. Rep., 1089). Feller *v.* Feller (66 Pac. Rep., 468). Canyonville & Gr. Co. *v.* Douglas County (5 Or. Rep., 281).

*What may be considered*: Oregon Coal Co. *v.* Coos County (47 Pac. Rep., 851). Garnsey *v.* County Ct. (54 Pac. Rep., 1089). Smith *v.* Portland (35 Pac. Rep., 665). Barton *v.* LaGrande (22 Pac. Rep., 111). Vincent *v.* Umatilla County (12 Pac. Rep., 732). Long *v.* Thompson (55 Pac. Rep., 978). Burnett *v.* Douglas County (4 Or. Rep., 388). Thompson *v.* Multnomah County (2 Or. Rep., 34). Venable *v.* Board of Police Commrs., etc. (67 Pac. Rep., 203). Hall *v.* Dunn (97 Pac. Rep., 811). Gue *v.* City of Eugene (100 Pac. Rep., 254). White *v.* Brown (101 Pac. Rep., 900).

*Adequacy*: McLeod *v.* Scott (26 Pac. Rep., 1061).

*Parties*: Gaines *v.* Linn County (28 Pac. Rep., 133). Wood *v.* Riddle (12 Pac. Rep., 385). Malone *v.* Cornelius (55 Pac. Rep., 536).

*Formal requisites*: Southern Oregon Co. *v.* Coos County (47 Pac. Rep., 584). Southern Oregon Co. *v.* Gage (47 Pac. Rep., 1101). Coos Bay Nav. *v.* Coos County (47 Pac. Rep., 1101). School Dist. *v.* Irwin (56 Pac. Rep., 413).

Undertaking of plaintiff.

SEC. 1378. Before allowing the writ the court or judge shall require the party applying therefor to give an undertaking, with one or more sureties, subject to its or his approval, in the amount to be fixed by it or him, conditioned that he will perform the judgment or decision sought to be reviewed in case the district court shall so order, and judgment may be given by said court against the applicant and his surety or sureties in case the judgment or decision sought

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to be reviewed shall be affirmed for the amount thereof, and the costs of said proceeding.

Carter Code, sec. 546; Charlton Code, sec. 546.

Gaston *v.* City of Portland (84 Pac. Rep., 1040).

To whom directed.

SEC. 1379. The writ shall be directed to the court, officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring it or them to return the writ to the district court, within a time therein specified, with a certified copy of the record or proceedings in question annexed thereto, that the same may be reviewed by such district court, and requiring the defendant to desist from further proceedings in the matter to be reviewed.

Carter Code, sec. 547; Charlton Code, sec. 547.

Tyler *v.* State (42 Pac. Rep., 518). Johns *v.* Marion County (4 Or. Rep., 46). Fisher *v.* Union County (72 Pac. Rep., 797). Gaston *v.* City of Portland (84 Pac. Rep., 1040). Cusiter *v.* City of Silverton (93 Pac. Rep., 234).

Stay of proceedings; when returnable.

SEC. 1380. The words in the writ requiring the stay of proceedings may be inserted or omitted in the discretion of the court or judge issuing the same, and the proceedings shall be stayed or not, accordingly. The writ shall be made returnable at the next term of the district court, or in vacation, and if the latter, the same may be tried and judgment given therein, by the judge thereof, in like manner and with like effect as in term time.

Carter Code, sec. 548; Charlton Code, sec. 548.

When and by whom writ issued; how served.

SEC. 1381. Upon the filing of the order allowing the writ, and the petition and undertaking of the plaintiff, the clerk shall issue the writ, according to the direction of the order. The writ shall be served by delivering a copy of the original to the opposite party in the action or proceeding sought to be reviewed, at least ten days before the return of the original writ, and may be served by an officer or person authorized to serve a summons, who shall indorse on the original writ the manner of service thereof.

Carter Code, sec. 549; Charlton Code, sec. 549.

Malone *v.* Cornelius (55 Pac. Rep., 536).

Incomplete return; limitation of writ.

SEC. 1382. If the return to the writ be incomplete, the court may order a further return to be made. In no case shall a writ be allowed unless the application therefor be made within six months from the date of the decision or determination complained of.

Carter Code, sec. 550; Charlton Code, sec. 550.

Sou. Oreg. Co. *v.* Coos County (47 Pac. Rep., 584). O. & W. Mtg. & Sav. Bank *v.* Jordan (17 Pac. Rep., 621). Rhea *v.* Umatilla County (2 Or. Rep., 298). Farrow *v.* Nevin (75 Pac. Rep., 711).

Power of court to review.

SEC. 1383. Upon the review the court shall have power to affirm, modify, reverse, or annul the decision or determination reviewed, and, if necessary, to award restitution to the plaintiff, or, by mandate, direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the district court on review an appeal may be taken in like manner and with like effect as from a judgment of such district court in an action.

Carter Code, sec. 551; Charlton Code, sec. 551.

Cameron *v.* Wasco County (41 Pac. Rep., 160). Woodruff *v.* Douglas County (21 Pac. Rep., 49). Gaston *v.* City of Portland (84 Pac. Rep., 1040).

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# CHAPTER FIFTY-SIX.

## OF THE WRIT OF MANDAMUS.

Sec.
1384. Mandamus to be known as in this chapter.
1385. To whom writ may issue; not to control judicial discretion.
1386. How writ applied for and by whom allowed and issued.
1387. How directed and served.
1388. Either alternative or peremptory; what to contain.
1389. When peremptory writ shall be issued in first instance.
1390. When defendant may show cause, and how.
1391. If defendant fail to show cause, peremptory writ to issue.
1392. Pleadings and mode of proceeding therein.
1393. Recovery of damages.
1394. Recovery of damages a bar to other suit or action.
1395. When court may impose fine upon defendant.
1396. How tried.
1397. Appeal from judgment of district court.

June 6, 1900.
31 Stat. L., 421-422.

Mandamus to be known as in this chapter.

SEC. 1384. The writ of mandamus is known in this code as prescribed and regulated in this chapter.

Carter Code, sec. 552; Charlton Code, sec. 552.

To whom writ may issue; not to control judicial discretion.

SEC. 1385. It may be issued to any inferior court, corporation, board, officer, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. But though the writ may require such court, corporation, board, officer, or person to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

Carter Code, sec. 553; Charlton Code, sec. 553.

Finn *v.* Hoyt (52 Fed. Rep., 83; 1 Alaska Rep., 722).

Brand *v.* Common Council of Nome (3 Alaska Rep., 39). "In this case the court held, that a citizen is beneficially interested and is entitled to be a relator in a mandamus action, where the object of the writ is to enforce the performance of a public duty."

U. S. *v.* Folsom (3 Alaska Rep., 226). Town of Nome *v.* Rice (3 Alaska Rep., 602). Davis *v.* Sitka School Board (3 Alaska Rep., 481). Servian Society *v.* Douglas Camp (3 Alaska Rep., 5). Dalton *v.* Gunnison (165 Fed. Rep., 873).

*When writ lies*: Ball *v.* Lappius (3 Or. Rep., 55). Warner *v.* Meyers (4 Or. Rep., 72). Stevens *v.* Carter (40 Pac. Rep., 1074). Burch *v.* Earhart (7 Or. Rep., 59). Shattuck *v.* Kincaid (49 Pac. Rep., 758). State *v.* Jacobs (8 Pac. Rep., 332). State *v.* Brown (10 Or. Rep., 223). Crossman *v.* Kincaid (49 Pac. Rep., 764). Erwin *v.* Kincaid (49 Pac. Rep., 765). Coos Bay R. Co. *v.* Welder (38 Pac. Rep., 338). Smith *v.* King (12 Pac. Rep., 8). Ah Lep *v.* Gong Choy (11 Pac. Rep., 72). Che Gong *v.* Stearns (17 Pac. Rep., 871). McElvain *v.* Bradshaw (48 Pac. Rep., 424). McLeod *v.* Scott (26 Pac. Rep., 1061). Mackin *v.* Portland Gas Co. (61 Pac. Rep., 132; 62 Pac. Rep., 20; 49 L. R. A., 596). Haugen *v.* Albina Water Co. (28 Pac. Rep., 244; 14 L. R. A., 424). McWirter *v.* Brainard (5 Or. Rep., 426). White *v.* Mears (74 Pac. Rep., 931). State *v.* Williams (77 Pac. Rep., 965). Reed *v.* Dunbar (69 Pac. Rep., 451). State *v.* Malheur County (81 Pac. Rep., 368).

*When writ does not lie*: Durham *v.* Monumental S. Mining Co. (9 Or. Rep., 41). Ball *v.* Lappius (3 Or. Rep., 55). Slemmons *v.* Thompson (31 Pac. Rep., 514). Biggs *v.* McBride (21 Pac. Rep., 878). Stevens *v.* Carter (40 Pac. Rep., 1074). Mackin *v.* Portland Gas Co. (62 Pac. Rep., 20; 49 L. R. A., 596). Habersham *v.* Sears (5 Pac. Rep., 208). State *v.* Ryan (38 Pac. Rep., 618). Oregon City *v.* Moore (46 Pac. Rep., 1017). Morrow County *v.* Hendrix (12 Pac. Rep., 806). Simon *v.* Durham (10 Or. Rep., 52). Hayes *v.* Clifford (72 Pac. Rep., 1). Boyd *v.* Dunbar (75 Pac. Rep., 695).

How writ applied for and by whom allowed and issued.

SEC. 1386. The writ shall be allowed by the court, or judge thereof, upon the petition, verified as a complaint in an action, of the party beneficially interested. It may be allowed with or without notice to

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the adverse party, as in the case of a writ of review. Upon the filing of the petition and order of allowance, the writ shall be issued by the clerk in accordance therewith.

Carter Code, sec. 554; Charlton Code, sec. 554.

Brand *v.* Common Council of Nome (3 Alaska Rep., 39). State *v.* Grace (25 Pac. Rep., 332). State *v.* Ware (10 Pac. Rep., 885). McLeod *v.* Scott (26 Pac. Rep., 1061).

How directed and served.

SEC. 1387. The writ shall be directed to the court, corporation, board, officer, or person mentioned or designated in the order of allowance, and may be served thereon by any officer or person authorized to serve a summons by delivery of a copy of the original to such officer or person, or to any member of such court, or to any officer of such corporation upon whom this code authorizes a summons to be served. The proof of service shall be the same as in a writ of review, and obedience to the writ may be enforced in such manner as the court, or judge thereof, shall direct.

Carter Code, sec. 555; Charlton Code, sec. 555.

Either alternative or peremptory; what to contain.

SEC. 1388. The writ is either alternative or peremptory. When it is alternative, it shall state concisely the facts according to the petition, showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court or judge thereof by whom the writ was allowed, at a time and place therein specified, why he has not done so; and that he then and there return the writ, with his certificate annexed, of having done as he is commanded, or the cause of his omission thereof. When peremptory, the writ shall be in similar form, except that the words requiring the defendant to show cause why he has not done as commanded, and to return the cause therefor, shall be omitted.

Carter Code, sec. 556; Charlton Code, sec. 556.

McLeod *v.* Scott (26 Pac. Rep., 1061). Elliott *v.* Oliver (29 Pac. Rep., 1). Shively *v.* Pennoyer (39 Pac. Rep., 396). Sears *v.* Kincaid (53 Pac. Rep., 303). State *v.* Malheur County (81 Pac. Rep., 368).

When peremptory writ shall be issued in first instance.

SEC. 1389. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus shall be allowed in the first instance; in all other cases the alternative writ shall be first issued.

Carter Code, sec. 557; Charlton Code, sec. 557.

Jacksonville School Dist. *v.* Crowell (52 Pac. Rep., 693).

When defendant may show cause, and how.

SEC. 1390. On the return day of the alternative writ, or such further day as the court or judge thereof may allow, the defendant on whom the writ shall have been served may show cause by demurrer or answer to the writ in the same manner as to a complaint in an action.

Carter Code, sec. 558; Charlton Code, sec. 558.

If defendant fail to show cause, peremptory writ to issue.

SEC. 1391. If the defendant do not show cause by demurrer or answer, a peremptory mandamus shall be allowed against him. If the answer contain new matter, the same may be demurred or replied to by the plaintiff within such time as the court or judge may prescribe. If the replication contain new matter, the same may be demurred to by the defendant within such time as the court or judge may prescribe, or he may countervail such matter on the trial or other proceedings by proof, either in direct denial or by way of avoidance.

Carter Code, sec. 559; Charlton Code, sec. 559.

Pleadings and mode of proceedings therein.

SEC. 1392. The pleadings in the proceeding by mandamus are those mentioned in the two sections last preceding. They are to have the

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same effect, and to be construed and may be amended in the same manner, as pleadings in an action. Either party may move to strike out, or be allowed to plead over after motion or demurrer allowed or disallowed, and the issues joined shall be tried and the further proceedings thereon had in like manner and with like effect as in an action.

Carter Code, sec. 560; Charlton Code, sec. 560.

McLeod *v.* Scott (26 Pac. Rep., 1061). | 368). State *v.* Richardson (85 Pac.
State *v.* Malheur County (81 Pac. Rep., | Rep., 225).

Recovery of damages.

SEC. 1393. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained by reason of the premises, to be ascertained in the same manner as in an action, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

Carter Code, sec. 561; Charlton Code, sec. 561.

Bush *v.* Geisy (19 Pac. Rep., 126).

Recovery of damages a bar to other suit or action.

SEC. 1394. A recovery of damages by virtue of this chapter against a party who shall have made a return to a writ of mandamus is a bar to any other action against the same party for the same cause.

Carter Code, sec. 562; Charlton Code, sec. 562.

When court may impose fine upon defendant.

SEC. 1395. Whenever a peremptory mandamus is directed to a public officer or body commanding the performance of any public duty specially enjoined by law, if it appear to the court or judge thereof that such officer or any member of such body has without just excuse refused or neglected to perform the duty so enjoined, the court or judge may imprison, or impose a fine, not exceeding one thousand dollars, upon every such officer or member of such body for each refusal.

Carter Code, sec. 563; Charlton Code, sec. 563.

Burgtorf *v.* Bentley (41 Pac. Rep., 163).

How tried.

SEC. 1396. In the district court the writ may be made returnable either in term time or vacation, and, if the latter, may be tried and determined before the judge thereof in like manner and with like effect as in term time.

Carter Code, sec. 564; Charlton Code, sec. 564.

Appeal from judgment of district court.

SEC. 1397. From the judgment of the district court, or judge thereof, refusing to allow a mandamus, or directing a peremptory mandamus, an appeal may be taken in like manner and with like effect as in an action.

Carter Code, sec. 565; Charlton Code, sec. 565.

Reed *v.* Dunbar (69 Pac. Rep., 451). | State *v.* Richardson (85 Pac. Rep., 225).

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## CHAPTER FIFTY-SEVEN.

### OF THE WRIT OF HABEAS CORPUS.


Sec.
1398. Who may prosecute.
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1403. What the writ shall contain.
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Sec.
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1439. What court has jurisdiction.
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June 6, 1900.
31 Stat. L., 423-429.

Who may prosecute.

SEC. 1398. Every person imprisoned, or otherwise restrained of his liberty, within the district, under any pretense whatsoever, except in the cases specified in the next section, may prosecute a writ of habeas corpus according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal to be delivered therefrom.

Carter Code, sec. 566; Charlton Code, sec. 566.

Who not entitled to prosecute.

SEC. 1399. Persons properly imprisoned or restrained by virtue of the legal judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution regularly and lawfully issued upon such judgment or decree, shall not be allowed to prosecute the writ.

Carter Code, sec. 567; Charlton Code, sec. 567.

In re McKenzie (180 U. S. Rep., 536; 1 Alaska Rep., 750). In re P. C. Burkell (2 Alaska Rep., 108). Ex parte Stacey (75 Pac. Rep., 1060).

By whom allowed, and application therefor.

SEC. 1400. The writ shall be allowed by the court, or the judge thereof, upon the petition of the party for whose relief it is intended, or by some other person in his behalf, signed and verified by the oath of the petitioner, to the effect that he believes it to be true

Carter Code, sec. 568; Charlton Code, sec. 568.

Petition for writ; what it shall contain.

SEC. 1401. The petition shall state in substance—

First. That the party in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the place where, and officer or person by whom he is imprisoned or restrained, naming both parties, if their names be known, or describing them, if not known;

Second. That such person is not imprisoned or restrained by virtue of any order, judgment, or process specified in section thirteen hundred and ninety-nine;

Third. The cause or pretense of such imprisonment or restraint, according to the best knowledge or belief of the petitioner;

Fourth. If the imprisonment or restraint be in virtue of any order, warrant, or process, a copy thereof shall be annexed to the petition,

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or it must be alleged that, by reason of the removal or concealment of the party before the application, a demand of such copy could not be made, or that such demand was made, and the legal fees therefor tendered to the person having the party in his custody, and that a copy was refused;

Fifth. If the imprisonment or restraint be alleged to be illegal, in what the alleged illegality consists;

Sixth. That the legality of the imprisonment or restraint has not been already adjudged upon a prior writ of habeas corpus to the knowledge or belief of the petitioner.

Carter Code, sec. 569; Charlton Code, sec. 569.

NOTE.—For fourth paragraph of above section, see In re P. C. Burkell (2 Alaska Rep., 112).

When allowed.

SEC. 1402. The court or judge to whom the petition is presented must allow the writ without delay, unless it appears from the petition itself, or from the documents annexed thereto, that the person for whose relief it is intended is by the provisions of this chapter prohibited from prosecuting the writ. Upon the filing of the petition and the order of allowance with the clerk, the clerk shall issue the writ immediately in accordance therewith.

Carter Code, sec. 570; Charlton Code, sec. 570.

In re Jesse Scott Oliver (1 Alaska Rep. 1).

In re Sah Quah (31 Fed. Rep., 327; 1 Alaska Rep., 754). "A custom or rite prevailing among the uncivilized tribes of Indians in Alaska, whereby slaves are bought, sold, and held in servitude, against their free will, and subjected to ill treatment at the pleasure of the owner, is contrary to the Thirteeth Amendment of the Constitution of the United States and the Civil Rights Bill of 1866, and the court held in above case that a person so held in slavery will be released by order of the court upon writ of habeas corpus."

In re Burkell (2 Alaska Rep., 108).

What the writ shall contain.

SEC. 1403. The writ shall command the defendant to produce the person imprisoned or restrained, by whatsoever name he may be charged or called, and certify and return therewith the time and cause of his imprisonment or restraint, before the court or judge allowing the writ, at a time and place therein specified, or immediately after the receipt of the writ, to do and receive what shall then and there be considered concerning the person so imprisoned or restrained; or when it appears by the petition and documents thereto annexed that the cause or offense for which the person is imprisoned or restrained is not bailable, the production of the party may be dispensed with, though such production be prayed for in the petition, and the writ issued accordingly.

Carter Code, sec. 571; Charlton Code, sec. 571.

Not to be disobeyed for want of form.

SEC. 1404. The writ shall not be disobeyed for any defect of form. It is sufficient—

First. If the officer or person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and anyone who may be served with the writ is to be deemed the officer or person to whom it was directed, although it may be directed to him by a wrong name or description, or to another person;

Second. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Carter Code, sec. 572; Charlton Code, sec. 572.

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What the return shall contain.

SEC. 1405. The officer or person upon whom the writ shall have been duly served shall state in his return, plainly and unequivocally—

First. Whether he has or has not the party in his custody or power or under his restraint, and if he have not, whether he has had the party in his custody or under his power or restraint at any and what time prior or subsequent to the date of the writ;

Second. If he has the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

Third. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable;

Fourth. If the person upon whom such writ shall have been served shall have had the party in his power or custody or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return shall be signed by the person making the same, and, except where such person shall be a sworn public officer and shall make his return in his official capacity, it shall be verified by oath.

Carter Code, sec. 573; Charlton Code, sec. 573.

Person to be produced.

SEC. 1406. The person or officer on whom the habeas corpus shall have been served shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Carter Code, sec. 574; Charlton Code, sec. 574.

Warrant to issue in case of neglect or refusal to obey.

SEC. 1407. If the person upon whom such writ shall have been duly served shall refuse or neglect to obey the same by producing the party named in such writ and making a full and explicit return thereto within the time required, and no sufficient excuse be shown, it shall be the duty of the court or judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue a warrant against such person, directed to the marshal, and commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and on such person being so brought he shall be committed to close custody until he shall make return to such writ and comply with any order that may be made in relation to the person for whose relief such writ shall have been issued.

Carter Code, sec. 575; Charlton Code, sec. 575.

If officer neglects, to whom warrant to issue.

SEC. 1408. If the marshal or any deputy shall have neglected to return such writ, the warrant may be directed to any other person to be designated therein, who shall have full power to execute the same, and such marshal or deputy upon being brought up may be committed to any jail or other place of imprisonment in the District.

Carter Code, sec. 576; Charlton Code, sec. 576.

Precept to marshal.

SEC. 1409. The court or judge by whom any such warrant shall be issued may also, at the same time or afterwards, issue a precept to the marshal or other person to whom such warrant shall have been directed, commanding him to bring forthwith before such court or judge the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such marshal or person until discharged or remanded.

Carter Code, sec. 577; Charlton Code, sec. 577.

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When cause to be inquired into.

SEC. 1410. The court or judge before whom the party shall be brought on such writ shall, immediately after the return thereof, proceed to examine into the facts contained in such return and into the cause of the imprisonment or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

Carter Code, sec. 578; Charlton Code, sec. 578.

If no legal cause shown, discharge granted.

SEC. 1411. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which he is held.

Carter Code, sec. 579; Charlton Code, sec. 579.

Ex parte Dubuque (1 Alaska Rep., 16). | Harrington *v.* Jones (99 Pac. Rep., 935).

When party to be remanded.

SEC. 1412. It shall be the duty of the court or judge forthwith to remand such party if it shall appear that he is legally detained in custody.

Carter Code, sec. 580; Charlton Code, sec. 580.

In certain cases, when to be discharged.

SEC. 1413. If it appear on the return that the prisoner is in custody by virtue of an order or civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, such prisoner shall be discharged in either of the following cases:

First. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum, or person;

Second. When, though the original imprisonment was lawful, yet by some act, omission, or event which has taken place afterwards the party has become entitled to be discharged;

Third. When the order or process is defective in some matter of substance required by law, rendering such process void;

Fourth. When the order or process, though in proper form, has been issued in a case not allowed by law;

Fifth. When the person having the custody of the prisoner under such order or process is not the person empowered by law to detain him; or,

Sixth. When the order or process is not authorized by any judgment of any court nor by any provision of law.

Carter Code, sec. 581; Charlton Code, sec. 581.

Alaska Com. Co. *v.* Raymond (1 Alaska Rep., 155). Ex parte Dubuque (1 Alaska Rep., 16). In re Burkell (2 Alaska Rep., 111). Merriman *v.* Morgan (7 Or. Rep., 69). Pomeroy *v.* Lappius (9 Or. Rep., 363). Barton *v.* Saunders (16 Pac. Rep., 921). Ex parte Howe (37 Pac. Rep., 536). Ex parte Tice (49 Pac. Rep., 1038). Norman *v.* Zieber (3 Or. Rep., 197). Fleming *v.* Bills (3 Or. Rep., 287). Ex parte Stacey (75 Pac. Rep., 1060).

Legality of certain judgments and process not to be inquired into.

SEC. 1414. But no court or judge, on the return of a writ of habeas corpus, has power to inquire into the legality or justice of any order, judgment, or process specified in section thirteen hundred and ninety-nine, nor into the justice, propriety, or legality of any commitment for a contempt made by a court, officer, or body, according to law, and charged in such commitment, as provided by law.

Carter Code, sec. 582; Charlton Code, sec. 582.

On commitment for criminal offenses, how to proceed.

SEC. 1415. If it appear that the party has been legally committed for a criminal offense, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be probably guilty of such offense, although the commitment be irregular, he shall forthwith be

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remanded to the custody or placed under the restraint from which he was taken, if the officer or person under whose custody or restraint he was be legally entitled thereto; if not so entitled, he shall be committed to the custody of the officer or person so entitled.

Carter Code, sec. 583; Charlton Code, sec. 583.

In re Burkell (2 Alaska Rep., 112).

Until judgment given, how to be kept.

SEC. 1416. Until judgment be given upon the return, the party may either be committed to the custody of the marshal or placed in such care or under such custody as his age and other circumstances may require.

Carter Code, sec. 584; Charlton Code, sec. 584.

When notice to be given to third party.

SEC. 1417. When it appears, from the return to the writ, that the party named therein is in custody on an order or process under which another person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the party so interested, or his attorney, shall have had notice of the time and place at which such writ shall have been made returnable.

Carter Code, sec. 585; Charlton Code, sec. 585.

Notice, when given to the district attorney.

SEC. 1418. When it appears from the return that the party is imprisoned or restrained on a criminal accusation, the court or judge shall make no order for his discharge until notice of the return is given to the district attorney.

Carter Code, sec. 586; Charlton Code, sec. 586.

Return may be controverted.

SEC. 1419. The plaintiff in the proceeding, on the return of the writ, may, by replication, verified as in an action, controvert any of the material facts set forth in the return, or he may allege therein any fact to show, either that his imprisonment or restraint is unlawful, or that he is entitled to his discharge; and thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of the imprisonment or restraint, or against the same, and to dispose of the party as the law and justice of the case may require.

Carter Code, sec. 587; Charlton Code, sec. 587.

Merriman *v.* Morgan (7 Or. Rep., 74). Ex parte Howe (37 Pac. Rep., 536). Ex parte Stacey (75 Pac. Rep., 1060). Harrington *v.* Jones (99 Pac. Rep., 935).

Pleadings on the return.

SEC. 1420. The plaintiff may demur to the return, or the defendant may demur to the new matter, if any, set forth in the replication of the plaintiff, or by proof controvert the same, as upon a direct denial or avoidance. The pleadings herein provided for shall be made within such time as the court or judge shall direct, and they shall be construed and have the same effect as in an action.

Carter Code, sec. 588; Charlton Code, sec. 588.

Pomeroy *v.* Lappius (9 Or. Rep., 364).

When production of person dispensed with.

SEC. 1421. Whenever, from the sickness or infirmity of the party, he can not without danger be produced, the officer or person in whose custody he is may state that fact in his return to the writ, and if satisfied of the truth of the allegation, and the return be otherwise sufficient, the court or judge shall proceed to decide on the return and to dispose of the matter in the same manner as if the party had been produced.

Carter Code, sec. 589; Charlton Code, sec. 589.

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Judgment of discharge or dismissal of proceedings.

SEC. 1422. If it appear that the party detained is illegally imprisoned or restrained, judgment shall be given that he be forthwith discharged; otherwise judgment shall be given that the proceeding be dismissed and the party remanded.

Carter Code, sec. 590; Charlton Code, sec. 590.

Precept requiring the production of the person.

SEC. 1423. Notwithstanding the issuing of the writ without requiring the production of the person, the court or judge before whom the same was returnable may, before final decision, issue a precept to the officer or other person to whom the writ was directed, requiring the production of the person.

Carter Code, sec. 591; Charlton Code, sec. 591.

Obedience to judgment of discharge, how enforced.

SEC. 1424. Obedience to a judgment for the discharge of a person imprisoned or restrained, pursuant to the provisions of this chapter, may be enforced by the court or judge by proceedings for a contempt. No officer or other person is liable to any action or proceeding for obeying such judgment of discharge.

Carter Code, sec. 592; Charlton Code, sec. 592.

Person once discharged not again imprisoned.

SEC. 1425. No person who has been finally discharged upon a proceeding by habeas corpus, pursuant to the provisions of this chapter, shall be again imprisoned, restrained, or kept in custody, for the same cause; but it is not to be deemed the same cause—

First. If he have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offense by the legal order or process of the court, wherein he is bound by recognizance or undertaking to appear, or in which he is indicted or convicted for the same offense; or,

Second. If, after a judgment or discharge for a defect of evidence, or for a material defect in the commitment, in a criminal case, the party be again arrested on sufficient evidence, and committed by legal process for the same offense; or,

Third. If, after a civil action, the party have been discharged for any illegality in the judgment, decree, or process hereinbefore specified, and be afterwards imprisoned for the same cause of action; or,

Fourth. If, in a civil action, he have been discharged from commitment on a writ of arrest, and be afterwards committed on execution, in the same action, or on a writ of arrest in another action, after the dismissal of the first one.

Carter Code, sec. 593; Charlton Code, sec. 593.

When warrant to issue in lieu of habeas corpus.

SEC. 1426. Whenever it appears by satisfactory evidence that any person is illegally imprisoned or restrained, and that there is good reason to believe that he will be carried out of the District, or suffer some irreparable injury before he can be relieved by the issuing of a writ of habeas corpus, any court or judge authorized to issue such writ may issue a warrant reciting the facts, and directed to the marshal or any other person therein designated, commanding such officer or person to take such person, and forthwith to bring him before such court or judge, to be dealt with according to law.

Carter Code, sec. 594; Charlton Code, sec. 594.

Arrest of the person having custody of the party.

SEC. 1427. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having the party in his custody, as for a criminal offense, committed in the taking or detaining of such party, the warrant may also contain an order for the arrest of such person for such offense.

Carter Code, sec. 595; Charlton Code, sec. 595.

Warrant, how executed and the proceedings thereon.

SEC. 1428. Any officer or person to whom such warrant shall be directed shall execute the same by bringing the party therein named

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and the person who detains him, if so commanded by the warrant, before the court or judge issuing the same; and thereupon the person detaining such party shall make a return in like manner, and the like proceeding shall be had thereon as if a writ of habeas corpus had been issued in the first instance.

Carter Code, sec. 596; Charlton Code, sec. 596.

Person arrested to be committed or bailed.

SEC. 1429. If the person having such party in his custody be brought before the court or judge as for a criminal offense, he shall be examined, committed, bailed, or discharged by the court or judge in like manner as in other criminal cases of the like nature.

Carter Code, sec. 597; Charlton Code, sec. 597.

Penalty for refusing copy of order.

SEC. 1430. Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority by which he shall detain any person to anyone who shall demand such copy and tender the fees therefor shall forfeit two hundred dollars to the person so detained.

Carter Code, sec. 598; Charlton Code, sec. 598.

When district attorney may apply for a writ.

SEC. 1431. Whenever a writ of habeas corpus is required in any action or proceeding, civil or criminal, to which the United States is a party, the application therefor may be made by the district attorney, and whenever so issued the court or judge shall state in the order of allowance that it was issued on such application.

Carter Code, sec. 599; Charlton Code, sec. 599.

By whom served; tender of fees and undertaking.

SEC. 1432. A writ of habeas corpus may be served by the marshal, or by any other person therein designated, at any place within the district, and the service thereof shall not be deemed complete, so as to require the prisoner to be brought up before the court or judge issuing the same, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a marshal or other officer, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such marshal or other officer, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific amount of money, and if not, then in such a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, to the effect that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed shall make return thereto, in the manner required by section fourteen hundred and five, and shall state therein the reason why such prisoner is not produced, and thereupon the court or judge granting the writ may proceed as if the prisoner were produced. But this section, from and inclusive of the words "and the service thereof," does not apply to a case wherein the writ is issued on the application of the district attorney.

Carter Code, sec. 600; Charlton Code, sec. 600:

How served.

SEC. 1433. The writ of habeas corpus may be served by delivery of a certified copy of the original to the officer or person to whom it is directed, or, if he can not be found, by leaving such copy at the jail or other place in which the party is imprisoned or restrained, with any under officer or other person having charge for the time of such party.

Carter Code, sec. 601; Charlton Code, sec. 601.

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Same subject.

SEC. 1434. If the officer or person on whom the writ ought to be served conceal himself, or refuse admittance to the person attempting to serve it, it may be served by affixing it in some conspicuous place on the outside either of his dwelling house or the jail or other place where the party is confined.

Carter Code, sec. 602; Charlton Code, sec. 602.

Duty to obey writ.

SEC. 1435. It is the duty of the marshal or other officer upon whom a writ of habeas corpus has been served, whether such writ be directed to him or not, upon payment or tender of the fees allowed by law and the delivery or tender of the undertaking herein prescribed, to obey and return the writ according to the exigency thereof; and it is the duty of every other person upon whom the writ is served, having the custody of the person for whose benefit it is issued, to obey and return it in like manner without requiring the payment of any fees, unless the judgment of such fees has been required by the court or judge allowing such writ.

Carter Code, sec. 603; Charlton Code, sec. 603.

When charges for producing party may be ordered paid.

SEC. 1436. Every court or judge allowing a writ of habeas corpus, directed to a person other than the marshal or other officer, may, in its discretion, require, in order to render the service effectual, that the charges of producing the party be paid by the applicant; and in such case the court or judge shall, in the order allowing the writ, specify the amount of such charges, which shall not exceed the fees allowed by law to marshals for similar services.

Carter Code, sec. 604. Charlton Code, sec. 604.

Proof of service.

SEC. 1437. The proof of service of the writ of habeas corpus shall be the same as in the service of a summons, except that the same shall be indorsed upon a copy of the writ made by the officer or person serving it, and returned to the clerk who issued the writ.

Carter Code, sec. 605; Charlton Code, sec. 605.

Within what time return to be made.

SEC. 1438. If the writ be returnable at a certain time, such return shall be made and the party produced, if required or there be no valid excuse therefor, as herein provided, at the time and place specified therein; if it be returnable forthwith, and the place of return be within twenty miles of the place of service, the return must be made and the party produced within twenty-four hours, and the same time is allowed for every additional twenty miles.

Carter Code, sec. 606; Charlton Code, sec. 606.

What court has jurisdiction.

SEC. 1439. At any time after the allowance of such writ or warrant by the court or judge thereof, the plaintiff therein, or the person applying therefor on his behalf, may give notice to the judge issuing the same, and thereupon, if necessary to avoid delay, such judge shall by order require that the return be made and the party produced before him at such time and place as may be convenient.

Carter Code, sec. 607; Charlton Code, sec. 607.

Appeal from judgment; question not to be reexamined.

SEC. 1440. Any party to a proceeding by habeas corpus, including the United States when the district attorney appears therein, may appeal from the judgment of the district court refusing to allow such writ or any final judgment therein, either in term time or vacation, in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be reexamined upon another or subsequent proceeding of the same kind.

Carter Code, sec. 608; Charlton Code, sec. 608.

Pomeroy *v.* Lapplus (9 Or. Rep., 365).

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# CHAPTER FIFTY-EIGHT.

## OF THE PUNISHMENT OF CONTEMPTS.

Sec.
1441. Contempts defined.
1442. Punishment for contempt.
1443. In presence of court, how punished.
1444. In other cases, mode of proceeding.
1445. If defendant imprisoned, may be brought up.
1446. The United States is plaintiff; when district attorney may prosecute.
1447. When defendant bailed; how warrant executed.
1448. Bail, how given.
1449. Return of warrant, and proceedings on appearance.
1450. Determination and sentence.
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1453. Person also liable to indictment.
1454. If party do not appear, proceedings thereon.
1455. Appeal from judgment.

June 6, 1900.
31 Stat. L., 429-431.
Contempts defined.

SEC. 1441. The following acts or omissions, in respect to a court of justice or proceedings therein are deemed to be contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Misbehavior in office or other willful neglect or violation of duty by an attorney, clerk, marshal, or other person appointed or selected to perform a judicial or ministerial service.

Fourth. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth. Disobedience of any lawful judgment, order, or process of the court.

Sixth. Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance.

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth. Unlawfully detaining a witness or party to an action or proceeding while going to, remaining at, or returning from the court where the same is for trial.

Ninth. Any other unlawful interference with the process or proceedings of the court.

Tenth. Disobedience of a subpœna duly served or refusing to be sworn or answer as a witness.

Eleventh. When summoned as a juror in a court, improperly conversing with a party to an action or proceeding to be tried at such court, or with any other person in relation to the merits of such action, or proceeding or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court.

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or proceeding contrary to law, after such action or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate, or officer. The conduct specified in subdivisions first and second of this section, when committed before a judicial officer, or disobedience of the lawful order or process of such officer made in the cases specified in section fifteen hundred and forty-three is also to be deemed a contempt of the authority of such officer.

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Carter Code, sec. 609; Charlton Code, sec. 609.

U. S. *v.* Richards & Jourden (1 Alaska Rep., 613). Richards *v.* U. S. (126 Fed. Rep., 105; 61 C. C. A., 161; 2 Alaska Rep., 660). Anderson *v.* Comptois (109 Fed. Rep., 971; 48 C. C. A., 1; 1 Alaska Rep., 712). Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 713). U. S. *v.* Price (1 Alaska Rep., 204). In re Noyes, in re Geary, in re Wood, in re Frost (121 Fed. Rep., 209; 57 C. C. A., 445; 2 Alaska Rep., 657). U. S. *v.* Pratt (3 Alaska Rep., 405, 419. Leber *v.* U. S. (170 Fed. Rep., 881; 96 C. C. A., 57). State *v.* Kaiser (23 Pac. Rep., 964; 8 L. R. A., 584). State *v.* Lavery (49 Pac. Rep., 852). State *v.* Downing (66 Pac. Rep., 921). State *v.* Conn (62 Pac. Rep., 289). Rostell *v.* Moret (23 Pac. Rep., 900). Newhouse *v.* Newhouse (12 Pac. Rep., 422). State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978). State *v.* Gutridge (80 Pac. Rep., 98). State *v.* Sieber (88 Pac. Rep., 313). State *v.* Small (90 Pac. Rep., 1011). State *v.* Jacobs (8 Pac. Rep., 332). Rob *v.* Connelly (111 U. S. Rep., 624).

Punishment for contempt.

SEC. 1442. Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars nor the imprisonment six months; and when the contempt is not one of those mentioned in subdivisions first and second of the last section, or in subdivision first of section fifteen hundred and forty-three, it must appear that the right or remedy of a party to an action or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by fine not exceeding one hundred dollars.

Carter Code, sec. 610; Charlton Code, sec. 610.

State *v.* Kaiser (23 Pac. Rep., 964; 8 L. R. A., 584). State *v.* Downing (66 Pac. Rep., 921). State *v.* Sieber (88 Pac. Rep., 313).

NOTE.—As to contempts in justice's court, see secs. 1845, 1846, chap. 98, of this title.

In presence of court, how punished.

SEC. 1443. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. In other cases of contempt the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted with the witnesses against him, but such trial shall be by the court or, in the discretion of the court, upon application of the accused, a trial by jury may be had as in any criminal case.

Carter Code, sec. 611; Charlton Code, sec. 611.

"In the case of U. S. *v.* Richards & Jourden (1 Alaska Rep., 615, 619) the court held, while the provisions of the law of Alaska providing a punishment for contempt of court are found in the Civil Code, they are penal in their nature, and controlled in practice by the rules of the criminal law

Leber *v.* U. S. (170 Fed Rep., 881).

In other cases, mode of proceeding.

SEC. 1444. In cases other than those mentioned in the section last preceding, before any proceedings can be taken therein the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

Carter Code, sec. 612; Charlton Code, sec. 612.

*Affidavit*: State *v.* Kaiser (23 Pac. Rep., 964; 8 L. R. A., 584). State *v.* Laverie (49 Pac. Rep., 852). State *v.* Downing (66 Pac. Rep., 922). State *v.* Conn (62 Pac. Rep., 289). State *v.* McKinnon (8 Or. Rep., 487). State *v.* Sieber (88 Pac. Rep., 313).

*Jurisdiction*: State *v.* McKinnon (8 Or. 493).

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If defendant imprisoned, may be brought out.

SEC. 1445. If the party charged be in the custody of an officer, by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody, that he may answer, and he shall thereupon be produced and held, until an order be made for his disposal.

Carter Code, sec. 613; Charlton Code, sec. 613.

The United States is plaintiff; when district attorney may prosecute.

SEC. 1446. In the proceeding for a contempt the United States is the plaintiff. In all cases of public interest the proceeding may be prosecuted by the district attorney on behalf of the United States; and in all cases where the proceeding is commenced upon the relation of a private party such party shall de deemed a coplaintiff with the United States.

Carter Code, sec. 614; Charlton Code, sec. 614.

State *v.* Downing (66 Pac. Rep., 922). | State *v.* Sieber (88 Pac. Rep., 313).

When defendant bailed; how warrant executed.

SEC. 1447. Whenever a warrant of arrest is issued pursuant to this chapter the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant or detained in custody without bail and, if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the marshal must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in section fourteen hundred and forty-eight.

Carter Code, sec. 615; Charlton Code, sec. 615.

State *v.* Crane (13 Pac. Rep., 773). | State *v.* Sieber (88 Pac. Rep., 313).

Bail, how given.

SEC. 1448. The defendant shall be discharged from the arrest upon executing and delivering to the marshal, at any time before the return day of the warrant, an undertaking, with two sufficient sureties, to the effect that the defendant will appear on such return day and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant.

Carter Code, sec. 616; Charlton Code, sec. 616.

Return of warrant, and proceedings on appearance.

SEC. 1449. The marshal shall return the warrant of arrest and the undertaking, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or has appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Carter Code, sec. 617; Charlton Code, sec. 617.

State *v.* Sieber (88 Pac. Rep., 313).

Determination and sentence.

SEC. 1450. Upon the evidence so taken the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged and, if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

Carter Code, sec. 618; Charlton Code, sec. 618.

Judgment to indemnify party injured.

SEC. 1451. If any loss or injury to a party in an action or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party ag-

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grieved recover off the defendant a sum of money sufficient to indemnify him and to satisfy his costs and disbursements, which judgment and the acceptance of the amount thereof, is a bar to any action or proceeding by the aggrieved party for such loss or injury.

Carter Code, sec. 619; Charlton Code, sec. 619.

State *v.* Crane (13 Pac. Rep., 773).

When party may be imprisoned.

SEC. 1452. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it; and in such case the act must be specified in the warrant of commitment.

Carter Code, sec. 620; Charlton Code, sec. 620.

Person also liable to indictment.

SEC. 1453. Persons proceeded against according to the provisions of this chapter are also liable to indictment for the same misconduct, if it be an indictable offense; but the court, before his conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Carter Code, sec. 621; Charlton Code, sec. 621.

If party do not appear, proceedings thereon.

SEC. 1454. When a warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

Carter Code, sec. 622; Charlton Code, sec. 622.

Leber *v.* U. S. (170 Fed. Rep., 881).

Appeal from judgment.

SEC. 1455. Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from a judgment in an action; but such appeal shall not have the effect to stay the proceeding in any other action or proceeding, or upon any judgment, decree, or order therein concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided in the procedure before them.

Carter Code sec. 623; Charlton Code sec. 623.

State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978).

NOTE.—For contempts of justices courts see secs. 1845, 1846, chap. 98 of this title.

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# CHAPTER FIFTY-NINE.

## OF THE MEANS OF THE PRODUCTION OF EVIDENCE.


Sec.
1456. Subpœna for witness defined.
1457. Subpœna, how and by whom issued.
1458. Subpœna, when and to whom issued in blank.
1459. Subpœna, how served.
1460. How served if witness concealed.
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1464. Disobedience to subpœna, how punished.
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31 Stat. L., 432–433.

Subpœna for witness defined.

SEC. 1456. The process by which the attendance of a witness is required is a subpœna. It is a writ directed to a person and requiring his attendance at a particular time and place, to testify as a witness in a particular action, suit, or proceeding therein specified, on behalf of a particular party therein mentioned. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Carter Code, sec. 624; Charlton Code, sec. 624.

U. S. *v.* Pratt (3 Alaska Rep., 410). State *v.* Bouren (27 Pac. Rep., 1058). | Leber *v.* U. S. (170 Fed. Rep., 881).

Subpœna, how and by whom issued.

SEC. 1457. The subpœna is as follows:

First. To require attendance before a court of record, or at the trial of an issue therein, or out of such court in an action, suit, or proceeding pending therein, by the clerk of such court;

Second. To require attendance before a commissioner appointed to take testimony by a court of the United States, or any State or Territory, or any foreign country, by any clerk of a court of record, in places within the jurisdiction of such court;

Third. To require attendance before the judge, justice of the peace, or other person authorized by law to take the testimony or affidavit of another, by such judge, justice of the peace, or other person, in the places within their respective jurisdiction.

Carter Code, sec. 625; Charlton Code, sec. 625.

U. S. *v.* Pratt (3 Alaska Rep., 410, 411, 420). Leber *v.* U. S. (170 Fed. Rep., 881; 96 C. C. A., 57). State *v.* Bourne (27 Pac. Rep., 1058). Wheeler *v.* Burckhardt (56 Pac. Rep., 644).

Subpœna, when and to whom issued in blank.

SEC. 1458. The subpœnas authorized by subdivisions first and second of the last section, upon the request of a party and an attorney of the court, shall be issued by the clerk in blank, and delivered to such party or attorney, who may thereafter fill up such blank with the name of the witness or witnesses that he may desire to be subpœnaed, and cause the same to be served as in this chapter required.

Carter Code, sec. 626; Charlton Code, sec. 626.

Subpœna, how served.

SEC. 1459. A subpœna may be served by the party or any other competent person over eighteen years of age. The service is made by reading and showing the original and delivering a copy to the witness personally, giving or offering to him at the same time the fees to which he is entitled for travel to and from the place designated and one day's attendance there. Such service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

Carter Code, sec. 627; Charlton Code, sec. 627.

Lombard *v.* Smith (60 Pac. Rep., 388).

How served if witness concealed.

SEC. 1460. The marshal or any deputy or any person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed, so as to prevent the service of a subpœna, and serve the same upon such witness.

Carter Code, sec. 628; Charlton Code, sec. 628.

Proof of service.

SEC. 1461. Proof of service of a subpœna shall be made in the same manner as in the service of a summons.

Carter Code, sec. 629; Charlton Code, sec. 629.

NOTE.—For proof of service of summons see sec. 884, chap. 4, ante.

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When witness obliged to attend.

SEC. 1462. A witness is not obliged to attend for oral examination or otherwise at a place distant more than one hundred miles from the place where he resides or at which he may be served with a subpœna; except that in an action or proceeding pending in a court of record the court or judge thereof, upon the affidavit of the party, or some one on his behalf, showing that the testimony of the witness is material and his oral examination important and desirable, may indorse upon the subpœna an order for the attendance of the witness; the service of such subpœna and order and the payment of legal fees to the witness are sufficient to require his attendance, if he be served within the district.

Carter Code, sec. 630; Charlton Code, sec. 630.

Burrows *v.* Balfour (65 Pac. Rep., 1062). Egan *v.* Finney (72 Pac. Rep., 133). Sargent *v.* Umatilla County (11 Pac. Rep., 225). Spencer *v.* Peterson (68 Pac. Rep., 1108). Luckey *v.* Lincoln County (70 Pac. Rep., 509).

Person present compelled to testify.

SEC. 1463. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance before such court or officer on a subpœna.

Carter Code, sec. 631; Charlton Code, sec. 631.

Disobedience to subpœna, how punished.

SEC. 1464. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer before whom he is required to attend or the refusal takes place, and if the witness be a party his complaint, answer, or reply may be stricken out.

Carter Code, sec. 632; Charlton Code, sec. 632.

U. S. *v.* Pratt (3 Alaska Rep., 406). Wheeler *v.* Burkhardt (56 Pac. Rep., 644).

NOTE.—As to contempts, see sec. 1441, chap. 58, ante.

Forfeiture therefor.

SEC. 1465. A witness disobeying a subpœna duly served shall forfeit to the party requiring his attendance the sum of fifty dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered by an action at law.

Carter Code, sec. 633; Charlton Code, sec. 633.

Lombard *v.* Smith (60 Pac. Rep., 388, 707).

When warrant may be issued to bring witness.

SEC. 1466. In case of the failure of a witness to attend, the court or officer before whom he is required to attend, upon proof of the due service of the subpœna and tender of his fees, may issue a warrant to the marshal requiring him to arrest the witness and bring him before the court or officer where his attendance was required.

Carter Code, sec. 634; Charlton Code, sec. 634.

State *v.* Birchard (59 Pac. Rep., 468).

Warrant of arrest or commitment.

SEC. 1467. Every warrant of commitment issued by a court or officer pursuant to this chapter shall specify therein the cause of the commitment; and if it be for refusing to answer a question such question shall be stated in the warrant.

Carter Code, sec. 635; Charlton Code, sec. 635.

If witness be a prisoner, how produced or examined.

SEC. 1468. If the witness be a prisoner, confined in a prison within the district, an order for his examination in the prison upon a deposition, or for his temporary removal and production, before a court or officer, for the purpose of being orally examined, may be made as follows:

First. By the court or judge thereof in which the action or proceeding is pending, unless it be a court of a justice of the peace;

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Second. By any judge of a court of record, when the action or proceeding is pending in a justice's court, or when the witness's deposition, affidavit, or oral examination is required before a judge or other person out of court;

Third. Such order shall only be made upon the affidavit of the party desiring the order, or some one on his behalf, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality;

Fourth. If the witness be imprisoned at the place where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required; in all other cases his examination shall be taken by deposition.

Carter Code, sec. 636; Charlton Code, sec. 636.

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# CHAPTER SIXTY.

## OF THE MODE OF TAKING THE TESTIMONY OF WITNESS.

Sec.
1469. How authenticated if taken outside the district.
1470. Affidavit, when may be used.
1471. When deponent to be produced for cross-examination.
1472. Proof of publication by affidavit.
1473. Where affidavit may be filed, and effect thereof.

June 6, 1900.
31 Stat. L., 433–434.

How authenticated if taken outside the district.

SEC. 1469. An affidavit or deposition taken in any State or Territory of the United States, the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows before it can be used in the District:

First. It must be certified by a commissioner appointed by the governor of the District to take affidavits and depositions in such State, Territory, District, or country, or

Second. It must be certified by a judge of a court having a clerk and a seal to have been taken and subscribed before him at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court, under the seal thereof.

Carter Code, sec. 637; Charlton Code, sec. 637.

Affidavit, when may be used.

SEC. 1470. An affidavit may be used to prove the service of a summons, notice, or other paper in an action or proceeding to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly provided for by law, except as provided in the next section.

Carter Code, sec. 638; Charlton Code, sec. 638.

When deponent to be produced for cross-examination.

SEC. 1471. Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice requiring the person making the affidavit to be produced before some officer authorized to administer oaths, therein named, for cross-examination. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge thereof may direct, upon a previous notice to his adversary of at least three days, he produce the deponent for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon such production the deponent may be examined by either party, but a party shall not be obliged to pro-

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duce a witness for examination as in this section provided, except within the district where the provisional remedy was allowed.

Carter Code, sec. 639; Charlton Code, sec. 639.

U. S. *v.* Pratt (3 Alaska Rep., 411).

Proof of publication by affidavit.

SEC. 1472. Proof of the publication of a document or notice required by law, or by an order of court or a judge, to be published in a newspaper, may be made by the affidavit of the printer of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. But such affidavit must be made within six months after the last day of publication.

Carter Code, sec. 640; Charlton Code, sec. 640.

McFarlane *v.* Cornelius (73 Pac. Rep., 325).

Where affidavit may be filed, and effect thereof.

SEC. 1473. If such affidavit be made in an action or proceeding pending in a court, it may be filed with the clerk thereof; and the same is primary evidence of the facts therein stated.

Carter Code, sec. 641; Charlton Code, sec. 641.

## CHAPTER SIXTY-ONE.

### OF DEPOSITIONS.

Sec.
1474. Deposition, when used.
1475. Testimony of witness out of the district.
1476. When deposition taken of witness within district.

June 6, 1900.

31 Stat. L., 434–435.

Deposition, when used.

SEC. 1474. In all cases other than those mentioned in section fourteen hundred and seventy where a written declaration under oath is used, it must be a deposition.

Carter Code, sec. 642; Charlton Code, sec. 642.

Testimony of witness out of the district.

SEC. 1475. The testimony of a witness out of the District may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding at any time after a question of fact has arisen therein.

Carter Code, sec. 643; Charlton Code, sec. 643.

When deposition taken of witness within District.

SEC. 1476. The testimony of a witness in the District may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, by the adverse party;

Second. When the witness's residence is such that he is not obliged to attend in obedience to the subpœna, as provided in section fourteen hundred and sixty-two;

Third. When the witness is about to go more than one hundred miles beyond the place of trial;

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

Fifth. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

Carter Code, sec. 644; Charlton Code, sec. 644.

"In the case of U. S. *v.* Pratt (3 Alaska Rep., 408, 409), the court held that the clerk of the District court has power to issue a subpœna to require a defendant to appear before a notary public and give his deposition under above quoted section and section 1484."

Leber *v.* U. S. (170 Fed. Rep., 881). Roberts *v.* Parrish (22 Pac. Rep., 136). Wheeler *v.* Burckhardt (56 Pac. Rep., 644). State *v.* Woolridge (78 Pac. Rep., 333). Carter *v.* Wakeman (78 Pac. Rep., 362). Armstrong *v.* Portland R. Co. (97 Pac. Rep., 715).

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# CHAPTER SIXTY-TWO.

## OF THE MANNER OF TAKING DEPOSITIONS OUT OF THE TERRITORY.

Sec.
1477. Testimony of a witness out of the District, how taken.
1478. Commission, how and by whom issued.
1479. Interrogatories may be annexed.
1480. Contents of commission.
1481. Trial, when postponed therefor.
1482. Deposition taken out of District before commission.
1483. Either party may attend or require written interrogatories.

June 6, 1900.
31 Stat. L., 435.

Testimony of a witness out of the District, how taken.

SEC. 1477. The deposition of a witness out of the district may be taken upon commission issued from the court, or without commission before a commissioner appointed by the governor of the District to take depositions in any State, Territory, or District of the United States, or in any foreign country.

Carter Code, sec. 645; Charlton Code, sec. 645.

Commission, how and by whom issued.

SEC. 1478. The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his own court, on the application of either party upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it.

Carter Code, sec. 646; Charlton Code, sec. 646.

Dunbar *v.* Degroff (1 Alaska Rep., 25).

La Grande Nat. Bank *v.* Blum (41 Pac. Rep., 659).

Interrogatories may be annexed.

SEC. 1479. Such interrogatories, direct and cross, as the respective parties may prepare, to be settled by the clerk or justice in a summary manner as to the form thereof, if the parties disagree, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Carter Code, sec. 647; Charlton Code, sec. 647.

Davis *v.* Emmons (51 Pac. Rep., 652).

Aldrich *v.* Columbia River Co. (64 Pac. Rep., 459).

Contents of commission.

SEC. 1480. The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without them, in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or justice who issued the commission, or other person designated and agreed upon, and forward it to him by mail or other usual channel of conveyance.

Carter Code, sec. 648; Charlton Code, sec. 648.

Heirs of Clark *v.* Ellis (9 Or. Rep., 128).

Trial, when postponed therefor.

SEC. 1481. A trial or other proceeding shall not be postponed by reason of a commission not being returned, except it appear by affidavit that the testimony of the witness is material and necessary, and that proper diligence has been used to obtain it.

Carter Code, sec. 649; Charlton Code, sec. 649.

Deposition taken out of District before commission.

SEC. 1482. The deposition of a witness out of the District, and in any State, Territory, or District of the United States, may also be taken before a commission appointed by the governor of the District to take depositions in such State, Territory, or District, upon giving to the adverse party eight days' notice of the time and place of the

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examination, the name of the commissioner, and the witness, if the distance of the place of examination from the place where the testimony is to be used does not exceed fifty miles, and one day in addition for every additional twenty-five miles.

Carter Code, sec. 650; Charlton Code, sec. 650.

Either party may attend or require written interrogatories.

SEC. 1483. Either party may attend upon such examination and examine the witnesses upon oral interrogatories, but if either party by a written notice to the other within three days from the service of the original notice, require it, it shall be taken upon written interrogatories, to be settled, if not agreed upon, by the same officer and in the same manner as in case of a deposition upon commission; and in such case the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

Carter Code, sec. 651; Charlton Code, sec. 651.

Leber *v.* U. S. (170 Fed. Rep., 881).

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# CHAPTER SIXTY-THREE.

## OF THE MANNER OF TAKING DEPOSITIONS IN THE TERRITORY.


Sec.
1484. Depositions in the district, when taken, and notice thereof.
1485. How taken; either party may attend.
1486. Certificate of officer.
1487. Deposition, to whom forwarded.
1488. May be used by either party; objections to relevancy or form.
1489. Proof before using certain depositions; insufficient notice.
1490. Depositions may be read at any time; exclusion of a portion.


June 6, 1900.

31 Stat. L., 436–437.

Depositions in the district, when taken, and notice thereof.

SEC. 1484. Either party may take the testimony of a witness in the district by deposition, in the cases allowed by this code, before the clerk of a court of record, or other person authorized to administer oaths, on giving the adverse party previous notice of the time and place of the examination, the name of the officer, and the witness; such notice shall be given at least three days before the day of the examination, if the distance of the place of examination from the residence of the person to whom notice is given does not exceed twenty-five miles, and one day in addition for every additional twenty-five miles, unless the court or judge thereof by order prescribe a shorter time. When a shorter time is prescribed the order shall be served with the notice.

Carter Code, sec. 652; Charlton Code, sec. 652.

U. S. *v.* Pratt (3 Alaska Rep., 400, 401, 409, 415). Wheeler *v.* Burckhardt (56 Pac. Rep., 644). Leber *v.* U. S. (170 Fed. Rep., 881).

How taken; either party may attend.

SEC. 1485. Either party may attend upon such examination and examine the witness upon oral interrogatories. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed it shall be read to or by the witness and subscribed by him. Before subscribing it the witness shall be allowed, if he desire it, to correct or explain any statement in the deposition, but such statement, although corrected and explained, shall remain a part of the deposition.

Carter Code, sec. 653; Charlton Code, sec. 653.

State *v.* Woolridge (78 Pac. Rep., 333).

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Certificate of officer.

SEC. 1486. The officer taking the deposition shall append thereto his certificate, under the seal of his office, if there be a seal, to the effect that the deposition was taken before him, at a place mentioned, between certain hours of a day or days mentioned, and reduced to writing by a person therein named; that, before proceeding to the examination, the witness may be duly sworn to tell the truth, the whole truth, and nothing but the truth; that the deposition was read to or by the witness and then by him subscribed.

Carter Code, sec. 654; Charlton Code, sec. 654.

Minard *v.* Stillman (57 Pac. Rep., 1022). Heirs of Clark *v.* Ellis (9 Or. Rep., 134). State *v.* Woolridge (78 Pac. Rep., 333).

Deposition, to whom forwarded.

SEC. 1487. The officer taking the deposition shall inclose the same in a sealed envelope, directed to the clerk of the court, or the justice of the peace before whom the action or proceeding is pending, or such other person as may by writing be agreed upon, and deliver or forward the same accordingly by mail or other usual channel of conveyance.

Carter Code, sec. 655; Charlton Code, sec. 655.

State *v.* Woolridge (78 Pac. Rep., 333).

May be used by either party; objections to relevancy or form.

SEC. 1488. A deposition taken pursuant to the provisions of this chapter may be used by either party upon the trial or proceeding against any party giving or receiving the notice, subject to all legal exceptions. But no objections can be made at the trial to the relevancy of the testimony or the form of the interrogatory, unless the same appear by the deposition or written interrogatories to have been taken at the time of the examination or the settling of such interrogatories. Section fourteen hundred and eighty-five, except the first sentence thereof, and sections fourteen hundred and eighty-six and fourteen hundred and eighty-seven shall apply to depositions taken out of the district on oral interrogatories.

Carter Code, sec. 656; Charlton Code, sec. 656.

Davis *v.* Emmons (51 Pac. Rep., 652). Aldrich *v.* Columbia R. Co. (64 Pac. Rep., 459).

Proof before using certain depositions; insufficient notice.

SEC. 1489. If a deposition be taken under subdivisions two, three, or four of section fourteen hundred and seventy-six, before the same can be used proof shall be made that the witness did reside beyond the service of a subpœna, or that he still continues absent or infirm, as the case may be. A deposition taken, whether in the district or without, upon insufficient notice or otherwise, not substantially in conformity with the provisions of this chapter, may be excluded from the case, unless such insufficient notice or other omission has been waived by the consent or conduct of the adverse party.

Carter Code, sec. 657; Charlton Code, sec, 657.

Foster *v.* Henderson (45 Pac. Rep., 898). Sugar Pine Land Co. *v.* Garrett (42 Pac. Rep., 129). Carter *v.* Wakeman (78 Pac. Rep., 362). Oliver *v.* Oregon Str. Co. (76 Pac. Rep., 1086).

NOTE.—In sec. 657, Charlton Code, the reference to sec 660 is obviously erroneous; it should be to sec. 644 of chap. 61, ante, this code, sec. 1476.

Depositions may be read at any time; exclusion of a portion.

SEC. 1490. When a deposition has once been taken it may be read in the same action or proceeding, or in any other action or proceeding between the same parties or their representatives upon the same subject, and is then to be deemed the evidence of the party reading it. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also.

Carter Code, sec. 658; Charlton Code, sec. 658.

Oregonian R. *v.* O. R. & N. Co. (28 Fed. Rep., 513). Murray *v.* Murray (6 Or. Rep., 26).

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# CHAPTER SIXTY-FOUR.

## OF THE GENERAL RULES OF EXAMINATION.


Sec.
1491. Order of proof, how regulated.
1492. Witness not under examination may be excluded.
1493. Interpreter sworn, when.
1494. Court may control mode of interrogation.
1495. Direct and cross-examination defined.
1496. Leading questions defined.
1497. When witness may testify or refresh his memory from writing.
1498. Cross-examination, as to what it extends.
1499. Party not to impeach his own witness.
1500. Witness, how reexamined.
1501. How witness impeached.
1502. Same subject.
1503. Evidence of good character, when allowed.
1504. Writing shown to witness may be inspected by adverse party.


June 6, 1900.

31 Stat. L., 437–438.

Order of proof, how regulated.

SEC. 1491. The order of proof shall be regulated by the sound discretion of the court. Ordinarily, the party beginning the case shall exhaust his evidence before the other begins.

Carter Code, sec. 659; Charlton Code, sec. 659.

Juneau Water Co. *v.* Jualpa Co. (3 Alaska Rep., 390). Osmun *v.* Winters (46 Pac. Rep., 780). State *v.* Isenhart (52 Pac. Rep., 569). Farmers' Nat. Bank *v.* Woodell (61 Pac. Rep., 837). Jones *v.* Peterson (74 Pac. Rep., 661). State *v.* Remington (91 Pac. Rep., 473). Bennett *v.* Stephens (8 Or. Rep., 445). Barrett *v.* Schleich (62 Pac. Rep., 792). Davis *v.* Emmons (51 Pac. Rep., 652). State *v.* Garrand (5 Or. Rep., 159). Sloan *v.* Sloan (78 Pac. Rep., 893). First N. Bank *v.* McCullough (93 Pac. Rep., 367).

Witness not under examination may be excluded.

SEC. 1492. If either party require it, the judge may exclude from the court room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses.

Carter Code, sec. 660; Charlton Code, sec. 660.

Schneider *v.* Hass (12 Pac. Rep., 236). Trotter *v.* Town of Stayton (77 Pac. Rep., 395).

Interpreter sworn, when.

SEC. 1493. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

Carter Code, sec. 661; Charlton Code, sec. 661.

Vulko Perovich *v.* U. S. (205 U. S. Rep., 722; 51 L. Ed., 86).

Court may control mode of interrogation.

SEC. 1494. The court may exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but, subject to this rule, the parties may put such legal and pertinent questions as they see fit. The court, however, may stop the production of further evidence, upon any particular point, when the evidence upon it is already so full as to preclude reasonable doubt.

Carter Code, sec. 662; Charlton Code, sec. 662.

Pacific Export Lbr. Co. *v.* N. P. Lbr. Co. (80 Pac. Rep., 105). State *v.* Megorden (88 Pac. Rep., 306).

Direct and cross examination defined.

SEC. 1495. The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

Carter Code, sec. 663; Charlton Code, sec. 663.

State *v.* Robinson (48 Pac. Rep., 357.)

Leading questions defined.

SEC. 1496. A question which suggests to the witness the answer which the examining party desires is denominated a leading or sug-

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gestive question. On a direct examination, leading questions are not allowed, unless merely formal or preliminary, except in the sound discretion of the court, under special circumstances, making it appear that the interests of justice require it.

Carter Code, sec. 664; Charlton Code, sec. 664.

Alaska United G. M. Co. *v.* Keating (116 Fed. Rep., 561; 53 C. C. A., 655; 1 Alaska, 740). State *v.* Che Gong (21 Pac. Rep., 882). State *v.* Ogden (65 Pac. Rep., 449). Shepard *v.* Yocum (10 Or. Rep., 408). Bush *v.* Robinson (81 Pac. Rep., 237). State *v.* Megorden (88 Pac. Rep., 306).

When witness may testify or refresh his memory from writing.

SEC. 1497. A witness is allowed to refresh his memory, respecting a fact, by anything written by himself or under his direction at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing. But in either case the writing must be produced, and may be inspected by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts; but such evidence shall be received with caution.

Carter Code, sec. 665; Charlton Code, sec. 665.

State *v.* Magers (57 Pac. Rep., 197). Susewind *v.* Lever (61 Pac. Rep., 644). State *v.* Bartmess (54 Pac. Rep., 167). Oyler *v.* Dantoff (59 Pac. Rep., 474). Haines *v.* Cadwell (66 Pac. Rep., 910). State *v.* Magers (58 Pac. Rep., 892). Friendly *v.* Lee (25 Pac. Rep., 396). Manchester Assurance Co. *v.* O. R. & N. Co. (79 Pac. Rep., 60).

Scope of cross-examination.

SEC. 1498. The adverse party may cross-examine the witness as to any matter stated in his direct examination or connected therewith, and in so doing may put leading questions; but if he examine him as to other matters, such examination is to be subject to the same rules as a direct examination.

Carter Code, sec. 666; Charlton Code, sec. 666.

Tla-koo-yel-lee *v.* U. S. (167 U. S. Rep., 274; 1 Alaska Rep., 741).

*Cross-examination to be confined to matters stated in direct*: Ah-doon *v.* Smith (34 Pac. Rep., 1093). Sayres *v.* Allen (35 Pac. Rep., 254). Maxwell *v.* Bolles (41 Pac. Rep., 661). State *v.* Ogden (65 Pac. Rep., 449).

*Scope of examination lies within discretion of court, but abuse of discretion is error*: Sayres *v.* Allen (35 Pac. Rep., 254). State *v.* Rinhart (38 Pac. Rep., 822). State *v.* McGrath (57 Pac. Rep., 321).

*Witness may be examined on matters not connected with direct examination to test accuracy, veracity, and credibility*: State *v.* Savage (60 Pac. Rep., 610). Smitson *v.* Southern Pac. Co. (60 Pac. Rep., 907). State *v.* Mah Jim (10 Pac. Rep., 306).

*As to laying foundation for impeaching testimony*: Krewson *v.* Purdum (11 Pac. Rep., 281).

*Foundation may be laid for showing hostility*: State *v.* Ellsworth (47 Pac. Rep., 199). State *v.* Welch (54 Pac. Rep., 213). State v. Lee (79 Pac. Rep., 577).

*As to conviction of a crime*: State *v.* Bacon (9 Pac. Rep., 393). State *v.* Bartmess (54 Pac. Rep., 167). State *v.* Che Gong (21 Pac. Rep., 882).

*Can not be examined as to matters merely to disgrace or harass*: State *v.* Olds (22 Pac. Rep., 940). State *v.* Bacon (9 Pac. Rep., 393).

*Where defendant in criminal case offers himself as witness, subject to same rules as other witnesses*: State *v.* Abrams (8 Pac. Rep., 329). State *v.* Bartmess (54 Pac. Rep., 167). State *v.* Miller (74 Pac. Rep., 658).

*Generally*: Ah Doon *v.* Smith (34 Pac. Rep., 1093). Oldenburg *v.* Oregon Sugar Co. (65 Pac. Rep., 869). Sayres *v.* Allen (35 Pac. Rep., 254). Maxwell *v.* Bolles (41 Pac. Rep., 661). State *v.* Olds (22 Pac. Rep, 940). Kenney *v.* Walker (44 Pac. Rep., 501). Lieuallen *v.* Musgrove (61 Pac. Rep., 1022). Oregon Pottery Co. *v.* Kern (47 Pac. Rep., 917). Smitson *v.* Southern Pac. Co. (60 Pac. Rep., 907). Farmers Bank *v.* Saling (54 Pac. Rep., 190). Osmun *v.* Winters (46 Pac. Rep., 780). Long *v.* Landers (10 Or. Rep., 175). State *v.* Huffman (16 Pac. Rep., 640). Willis *v.* Lance (43 Pac. Rep., 384, 487). State *v.* Savage (60 Pac. Rep., 610). Schreyer *v.* Turner Flour Co. (43 Pac. Rep., 719). State *v.* Adams (26 Pac. Rep., 837). Weidert *v.* State Ins. Co. (24 Pac. Rep., 242). Capital Lbr. Co. *v.* Learned (59 Pac. Rep., 454). State *v.* Robinson (48 Pac. Rep., 357). Goltra *v.* Penland (77 Pac. Rep., 129). State *v.* McCann (72 Pac. Rep., 137). Simmons *v.* O. R. & N. Co. (69 Pac.

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Rep., 440, 1022). Duntley *v.* Inman Poulsen Co. (70 Pac. Rep., 529). Thompson *v.* Purdey (77 Pac. Rep., 113). State *v.* Gray (79 Pac. Rep., 53). Beadle *v.* Paine (80 Pac. Rep., 903). Crossen *v.* Grandy (70 Pac. Rep., 906). State *v.* Lee (79 Pac. Rep., 577). Morse *v.* O'Dell (89 Pac. Rep., 2137). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 389). State *v.* Reyner (91 Pac. Rep., 301).

Party not to impeach his own witness.

SEC. 1499. The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section fifteen hundred and two.

Carter Code, sec. 667; Charlton Code, sec. 667.

State *v.* Steeves (43 Pac. Rep., 947). State *v.* Bartmess (54 Pac. Rep., 167). Langford *v.* Jones (22 Pac. Rep., 1064). State *v.* McDaniel (65 Pac. Rep., 521). State *v.* McCann (72 Pac. Rep., 137). State *v.* Jennings (87 Pac. Rep., 524).

Witness, how reexamined.

SEC. 1500. A witness once examined shall not be reexamined as to the same matter without leave of the court; but he may be reexamined as to any new matter upon which he has been examined by the adverse party. After the examinations on both sides are concluded the witness shall not be recalled without leave of the court. Leave is granted or withheld in the exercise of a sound discretion.

Carter Code, sec. 668; Charlton Code, sec. 668.

State *v.* Robinson (48 Pac. Rep., 357). Charlton *v.* Kelly (156 Fed. Rep., 433; 84 C. C. A., 295).

How witness impeached.

SEC. 1501. A witness may be impeached by the party against whom he was called, by a contradictory evidence, or by evidence that his general reputation for truth is bad, or that his moral character is such as to render him unworthy of belief, but not by evidence of particular wrongful acts; except that it may be shown by the examination of the witness or the record of the judgment that he has been convicted of a crime.

Carter Code, sec. 669; Charlton Code, sec. 669.

Ball *v.* U. S. (147 Fed. Rep., 32; 78 C. C. A., 126). State *v.* Hunsaker (19 Pac. Rep., 605). State *v.* Bacon (9 Pac. Rep., 393). State *v.* Che Gong (21 Pac. Rep., 882). State *v.* Lurch (6 Pac. Rep., 408). State *v.* Saunders (12 Pac. Rep., 441). State *v.* Bartmess (54 Pac. Rep., 167). Leveridge *v.* Frank (6 Or. Rep., 212). Wymer *v.* Smith (30 Pac. Rep., 416). Steeples *v.* Newton (7 Or. Rep., 110). State *v.* McCann (72 Pac. Rep., 137). State *v.* Warren (69 Pac. Rep., 679). State *v.* White (87 Pac. Rep., 137). State *v.* Reyner (91 Pac. Rep., 301). State *v.* Deal (98 Pac. Rep., 165). McIntosh *v.* McNair (99 Pac. Rep., 74).

Same subject.

SEC. 1502. A witness may also be impeached by evidence that he has made at other times statements inconsistent with his present testimony; but before this can be done the statements must be related to him, with the circumstances of times, places, and persons present; and he shall be asked whether he has made such statements, and, if so, allowed to explain them. If the statements be in writing they shall be shown to the witness before any question is put to him concerning them.

Carter Code, sec. 670; Charlton Code, sec. 670.

Charlton *v.* Kelly (156 Fed. Rep., 433).

*Generally*: State *v.* McDonald (8 Or. Rep., 114). State *v.* Fletcher (33 Pac. Rep., 575). State *v.* Brown (41 Pac. Rep., 1042). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Crockett (65 Pac. Rep., 447). State *v.* Gray (74 Pac. Rep., 927). State *v.* Deal (70 Pac. Rep., 532). State *v.* Houghton (75 Pac. Rep., 887). State *v.* Howard (72 Pac. Rep., 880). State *v.* Martin (83 Pac. Rep., 849). Dillard *v.* Otalla Min. Co. (94 Pac. Rep., 966). State *v.* Luper (95 Pac. Rep., 811). State *v.* Fuller (96 Pac. Rep., 456). State *v.* Coss (101 Pac. Rep., 193). State *v.* Ryan (108 Pac. Rep., 1009).

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*Must be asked with particulars of time, place and circumstances*: Krewson *v.* Purdum (11 Pac. Rep., 281). State *v.* Lurch (6 Pac. Rep., 411). Shepard *v.* Yocum (10 Or. Rep., 402). State *v.* Hunsaker (19 Pac. Rep., 605). State *v.* Welch (54 Pac. Rep., 213). State *v.* Deal (70 Pac. Rep., 532). State *v.* Gray (74 Pac. Rep., 927).

*Same rules apply for showing hostility to witness*: State *v.* Ellsworth (47 Pac. Rep., 199). State *v.* Stewart (4 Pac. Rep., 128). State *v.* Mackey (6 Pac. Rep., 648).

Evidence of good character, when allowed.

SEC. 1503. Evidence of the good character of a party is not admissible in a civil action or proceeding unless the issue therein involve his character, nor of a witness in any action or proceeding until the character of such witness has been impeached.

Carter Code, sec. 671; Charlton Code, sec. 671.

Osmund *v.* Winters (35 Pac. Rep., 250). First Nat. Bank *v.* Comm. Assn. Co. (52 Pac. Rep., 1052). Shepard *v.* Yocum (10 Or. Rep., 402). Cooper *v.* Phipps (33 Pac. Rep., 985; 22 L. R. A., 836). Munkers *v.* Farmers Ins. Co. (46 Pac. Rep., 850). State *v.* Porter (49 Pac. Rep., 964). Kelly *v.* Highfield (14 Pac. Rep., 744). Stamper *v.* Raymond (62 Pac. Rep., 20). State *v.* Lee (79 Pac. Rep., 577).

Writing shown to witness may be inspected by adverse party.

SEC. 1504. Whenever a writing is shown to a witness it may be inspected by the adverse party, and if proved by the witness shall be read to the jury before his testimony is closed, or it shall not be read, except on recalling the witness.

Carter Code, sec. 672; Charlton Code, sec. 672.

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# CHAPTER SIXTY-FIVE.

## OF THE EFFECT OF EVIDENCE.

Sec.
1505. On what points jury to be instructed.

June 6, 1900.
31 Stat. L., 438–439.
On what points jury to be instructed.

SEC. 1505. The jury, subject to the control of the court in the cases specified in this code, are the judges of the effect and value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

First. That their power of judging the effect of evidence is not arbitrary, but to be exercised with legal discretion and in subordination to the rules of evidence.

Second. That they are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in their minds against a less number, or against a presumption or other evidence satisfying their minds.

Third. That a witness willfully false in one part of his testimony may be distrusted in others.

Fourth. That the testimony of an accomplice ought to be viewed with distrust and of the oral admissions of a party with caution.

Fifth. That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence; that in criminal cases guilt shall be established beyond reasonable doubt.

Sixth. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

Seventh. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the

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power of the party, the evidence offered should be viewed with distrust.

Carter Code, sec. 673; Charlton Code, sec. 673.

Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 153). Overgaard *v.* Westerberg (3 Alaska Rep., 178, 190). Cascaden *v.* Bortolis (3 Alaska Rep., 204). Charlton *v.* Kelley (156 Fed. Rep., 433). Griggs *v.* U. S. (158 Fed. Rep., 572).

*Subdivision 1*: Church *v.* Melville (21 Pac. Rep., 387). State *v.* Reed (97 Pac. Rep., 627).

*Subdivision 2*: Blumfield *v.* Buchanan (8 Pac. Rep., 912). Peabody *v.* O. R. & N. Co. (26 Pac. Rep., 1053; 12 L. R. A., 823). Kraft *v.* N. P. Co. (62 Fed Rep., 739). Huber *v.* Miller (68 Pac. Rep., 400). McIntosh *v.* McNair (99 Pac. Rep., 74).

*Subdivision 3*: Cascaden *v.* Bortolis (3 Alaska Rep., 218). State *v.* Birchard (59 Pac. Rep., 468). U. S. *v.* Thompson (31 Pac. Rep., 333).

*Subdivision 4*: The *Coquitlam* (57 Fed. Rep., 706; 1 Alaska Rep., 742). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). State *v.* Fiester (50 Pac. Rep., 561). State *v.* Savage (60 Pac. Rep., 610). Thompson *v.* Purdy (77 Pac. Rep., 113).

*Subdivision 5*: Schumann *v.* Wagner (58 Pac. Rep., 770). Smith *v.* Smith (5 Or. Rep., 187). First Nat. Bank *v.* Fire Assn. (53 Pac. Rep., 8). Griggs *v.* U. S. (158 Fed. Rep., 572).

*Subdivisions 6 & 7*: Overgaard *v.* Westerberg (3 Alaska Rep., 190). Wimer *v.* Smith (30 Pac. Rep., 416). Mooney *v.* Holcomb (16 Pac. Rep., 716).

*Reasonable doubt*: State *v.* Morey (35 Pac. Rep., 665). State *v.* Roberts (13 Pac. Rep., 896). State *v.* Glass (5 Or. Rep., 73).

NOTE.—As to instructions generally see sec. 1023, chap. 17, ante.

# CHAPTER SIXTY-SIX.

## OF THE RIGHTS AND DUTIES OF WITNESSES.

Sec.
1506. Witness bound to attend when subpœnaed.
1507. What questions witness bound to answer.
1508. Right of witness to protection.
1509. When witness protected from arrest.
1510. To make affidavit if arrested.
1511. Court may discharge witness from arrest.

June 6, 1900.
31 Stat. L., 439–440.

Witness bound to attend when subpœnaed.

SEC. 1506. It is the duty of a witness, duly served with a subpœna and tendered mileage and fees for the day named, to attend at the time appointed, with any papers, books, documents, or other thing under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed; but a witness, at the end of each day's attendance, may demand of the party or his attorney the payment of his legal fees for the next following day, and if not then paid he is not obliged to remain longer in attendance.

Carter Code, sec. 674; Charlton Code, sec. 674.

Eagen *v.* Finney (72 Pac. Rep., 133.)

What questions witness bound to answer.

SEC. 1507. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself. But he need not give an answer which will have a direct tendency to subject him to criminal prosecution, or to degrade his character, unless, in the latter case, it be as to the very fact in issue, or to a fact from which the fact in issue would be presumed. This privilege is the privilege of the witness, but a witness must answer as to the fact of his previous conviction for felony.

Carter Code, sec. 675; Charlton Code, sec. 675.

Fitzpatrick *v.* U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 838). Ball *v.* U. S. (147 Fed. Rep, 32). State *v.* Bacon (9 Pac. Rep., 393). Cooper *v.* Phipps (33 Pac. Rep., 985; 22 L. R. A., 836). State *v.* Olds (22 Pac. Rep., 940). State *v.* Bartmess (54 Pac. Rep., 167). State *v.* Che Gong (21 Pac. Rep., 882). State *v.* Deal (98 Pac. Rep., 165).

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Right of witness to protection.

SEC. 1508. It is the right of the witness to be protected from irrelevant, insulting, or improper questions, or from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

Carter Code, sec. 676; Charlton Code, sec. 676.

When witness protected from arrest.

SEC. 1509. Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other officer, is exonerated from arrest in a civil case while going to the place of attendance, necessarily remaining there, and returning therefrom. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of court; and the officer making it is responsible to the witness arrested for double the amount of damages which may be assessed against him therefor, and is also liable to an action at the suit of the party serving the witness with the subpœna for the damages sustained by him in consequence of the arrest.

Carter Code, sec. 677; Charlton Code, sec. 677.

To make affidavit if arrested.

SEC. 1510. But the officer making the arrest is not liable in any way therefor, unless the person making the exception make, if required, an affidavit stating—

First. That he has been served with a subpœna to attend as a witness before a court, judge, or other officer, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and

Second. That he has not been thus served by his own procurement, with the intention of avoiding an arrest. The affidavit may be taken by the officer, and exonerates him from liability for not making the arrest or for discharging the witness when arrested.

Carter Code, sec. 678; Charlton Code, sec. 678.

Court may discharge witness from arrest.

SEC. 1511. The court, judge, or officer before whom the attendance of the witness is required may discharge a witness from an arrest made in violation of section fifteen hundred and nine.

Carter Code, sec. 679; Charlton Code, sec. 679.

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# CHAPTER SIXTY-SEVEN.

## OF EVIDENCE IN PARTICULAR CASES.


Sec.
1512. Whoever pays or delivers entitled to receipt.
1513. Objections to tender must be specified.
1514. Rules for construing description of real property.
1515. Offer of compromise not an admission.
1516. Confession of adultery in divorce cases.


June 6, 1900.

31 Stat. L., 440.

Whoever pays or delivers entitled to receipt.

SEC. 1512. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

Carter Code, sec. 680; Charlton Code, sec. 680.

Corbus *v.* Leonard (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 744).

Objections to tender must be specified.

SEC. 1513. The person to whom a tender is made shall at the time specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objec-



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tion be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Carter Code, sec. 681; Charlton Code, sec. 681.

Christensen *v.* Nelson (63 Pac. Rep., 648). Sayre *v.* Mohney (47 Pac. Rep., 197). Hoogendorn *v.* Daniel (178 Fed. Rep., 765).

Rules for construing description of real property.

SEC. 1514. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

First. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application;

Second. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount;

Third. Between different measurements which are inconsistent with each other that of angles is paramount to that of surfaces and that of lines paramount to both;

Fourth. When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title;

Fifth. When tidewater is the boundary, the rights of the grantor to low-water mark are included in the conveyance;

Sixth. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Carter Code, sec. 682; Charlton Code, sec. 682.

Price *v.* McIntosh (1 Alaska Rep., 289). Steen *v.* Wild Goose M. & T. Co. (1 Alaska Rep., 255). Steel *v.* Tanana Min. & R. Co. (2 Alaska Rep., 451).

*Subdivision 1*: Steen *v.* Wild Goose M. & T. Co. (1 Alaska Rep., 262). Hayden *v.* Brown (52 Pac. Rep., 490). Board of School Commrs. *v.* Wiley (10 Or. Rep., 86). Willamette Falls Co. *v.* Gordon (6 Pac. Rep., 175). House *v.* Jackson (32 Pac. Rep., 1027). Rayburn *v.* Winant (18 Pac. Rep., 588). Bingham *v.* Hunnyman (51 Pac. Rep., 735). Holcomb *v.* Mooney (11 Pac. Rep., 274). Trotter *v.* Town of Stayton (68 Pac. Rep., 3). Seabrook *v.* Coos Bay Ice Co. 89 Pac. Rep. 417).

*Subdivision 2*: Steen *v.* Wild Goose M. & T. Co. (1 Alaska Rep., 262). Anderson *v.* McCormick (22 Pac. Rep., 1062). Osburn *v.* Ketchum (35 Pac. Rep., 972). Kanne *v.* Otty (36 Pac. Rep., 537). Van Dusen *v.* Shively (29 Pac. Rep., 76). King *v.* Brigham (25 Pac. Rep., 150). Weiss *v.* Oregon I. & S. Co. (11 Pac. Rep., 255). Robison *v.* Laurer (40 Pac. Rep., 1012). Hill *v.* Cottell (28 Pac. Rep., 901). Trenwith *v.* Smith (70 Pac. Rep., 816). Schmidtke *v.* Keller (74 Pac. Rep., 222). Killgore *v.* Carmichael (72 Pac. Rep., 637). Cristensen *v.* Simmons (82 Pac. Rep., 805). Talbot *v.* W. K. Smith S. S. & Tr. Co. (107 Pac. Rep., 480).

*Subdivision 4*: Steel *v.* Tanama Mines R. Co. (2 Alaska Rep., 457). Johnson *v.* Hurst (77 Pac. Rep., 784). Johnson *v.* Tomlinson (68 Pac. Rep., 406).

*Subdivision 5*: Astoria Exchange Co. *v.* Shively (40 Pac. Rep., 92).

*Subdivision 6*: Carlisle *v.* Sloan (75 Pac. Rep., 217).

Offer of compromise not an admission.

SEC. 1515. An offer of compromise is not an admission that anything is due and no evidence thereof shall be permitted.

Carter Code, sec. 683; Charlton Code, sec. 683.

Coos Bay Nav. Co. *v.* Endicott (57 Pac. Rep., 61). Cochran *v.* Baker (56 Pac. Rep., 641).

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SEC. 1516. In an action for the dissolution of the marriage contract on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of dissolution. Confession of adultery in divorce cases.

Carter Code, sec. 684; Charlton Code, sec. 684.

NOTE.—See sec. 1299, chap. 45, ante.

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# CHAPTER SIXTY-EIGHT.

## OF PROCEEDINGS TO PERPETUATE TESTIMONY.


Sec.
1517. Evidence may be perpetuated.
1518. Order for examination, how obtained.
1519. Service of the order and notice in case of nonresidents.
1520. How taken and where filed.
1521. Papers filed with deposition, primary evidence.
1522. When the deposition may be used.
1523. How objected to when produced.
1524. Power and duty of the officer taking deposition.


June 6, 1900.
31 Stat. L., 441–442.

SEC. 1517. The testimony of a witness may be taken conditionally and perpetuated as provided in this chapter. Evidence may be perpetuated.

Carter Code, sec. 685; Charlton Code, sec. 685.

SEC. 1518. The order for taking the testimony may be made by any judge of the district court upon the application of the party desiring it, when it appears from the petition of such party, verified as a complaint— Order for examination, how obtained.

First. That the applicant is a party or expects to be a party to an action or proceeding in a court in the District, or that he has an interest in real property or some easement or franchise therein about which a controversy may arise which would be the subject of such an action or proceeding;

Second. That the testimony of a witness, whose name and place of residence is stated, is material to the prosecution or defense, as the case may be, of such action or proceeding, or possible controversy, and generally the question involved therein, and the facts expected to be proved by the witness;

Third. The names and residence of the adverse parties or persons adversely interested, so far as the applicant knows or can ascertain them.

The judge may thereupon in his discretion make an order allowing the examination, prescribing therein the place thereof, and how long before the examination the order and notice of the time and place therefor shall be served.

Carter Code, sec. 686; Charlton Code, sec. 686.

In re Carter (3 Or. Rep., 297).

SEC. 1519. If it appear that the adverse parties or persons adversely interested, or any of them, reside out of the District, or are unknown, the judge shall direct that, as to such parties or persons, service of the order and notice shall be made by publication, in the same manner as a summons. Upon proof of the service, the deposition may be taken conditionally by the judge who made the order of examination, or by any other officer or person therein designated. Service of the order and notice in case of nonresidents.

Carter Code, sec. 687; Charlton Code, sec. 687.

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How taken and where filed.

SEC. 1520. Every interrogatory or answer, or declaration of the witness, shall be taken down, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, and then certified by the judge or other officer or person taking the same and immediately thereafter filed in the office of the clerk of the court, together with the order for the examination of the witness, the petition on which the same was granted, the notice, and the proof of service of the order and notice.

Carter Code, sec. 688; Charlton Code, sec. 688.

Papers filed with deposition, primary evidence.

SEC. 1521. The papers filed with the deposition, as required by the last section, or a certified copy thereof, are primary evidence of the facts stated therein to show compliance with the provisions of this chapter.

Carter Code, sec. 689; Charlton Code, sec. 689.

When the deposition may be used.

SEC. 1522. If thereafter a trial be had between the persons named in the petition as parties actual, expectant, or possible, or their representatives or successors in interest, upon proof of the death or insanity of the witness, or that he is beyond the District and his residence unknown, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or a certified copy thereof may be given in evidence by either party.

Carter Code, sec. 690; Charlton Code, sec. 690.

How objected to when produced.

SEC. 1523. The deposition when so taken, when produced in evidence, may be objected to as if it was the oral testimony of the witness, except that the form of the interrogatory shall not be objected to.

Carter Code, sec. 691; Charlton Code, sec. 691.

Power and duty of the officer taking deposition.

SEC. 1524. The judge, officer, or other person taking the deposition shall control the examination, to the end that the whole truth may be declared by the witness, and if no one appears other than the applicant, he shall prevent leading and suggestive interrogatories by such applicant, except when the same may be necessary or merely formal, and shall himself cross-examine the witness, concluding with the general interrogatory to the effect whether the witness knows anything further in relation to the matter which would be of benefit to either party.

Carter Code, sec. 692; Charlton Code, sec. 692.

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# CHAPTER SIXTY-NINE.

## OF OATHS AND AFFIRMATIONS.


Sec.
1525. Who authorized to take testimony and administer oath.
1525a. Commanding officers of Revenue-Cutter Service administer oaths.
1526. Form may be varied to suit witness' belief.
1527. Same subject.
1528. Who may affirm.
1529. Affirmation equivalent to oath; when false to be deemed perjury.


June 6, 1900.

31 Stat. L., 442.

Who authorized to take testimony and administer oaths.

SEC. 1525. Every court, judge, clerk of a court, commissioner, justice of the peace, or notary public is authorized to take testimony in any action or proceeding, and such other persons in particular cases as this code elsewhere authorizes. Every such court or officer is

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authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized.

Carter Code, sec. 693; Charlton Code, sec. 693.

U. S. *v.* Pratt (3 Alaska Rep., 409). Blanchard *v.* Bennett (1 Or. Rep., 328). U. S. *v.* Shinn (14 Fed. Rep., 447). Dennisson *v.* Story (1 Or. Rep., 272).

Apr. 16, 1908. 35 Stat. L., 63. Oaths.

SEC. 1525a. The presidents and recorders of Revenue-Cutter Service courts and commanding officers of vessels of the Revenue-Cutter Service be, and are hereby, authorized to administer oaths of allegiance and such other oaths as may be necessary for the proper conduct of said Service; and that commanding officers of vessels of the Revenue-Cutter Service be, and are hereby, authorized to administer oaths generally in Alaska.

June 6, 1900. 31 Stat L., 442. Form may be varied to suit witness' belief.

SEC. 1526. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court or officer may in its discretion adopt that mode.

Carter Code, sec. 694; Charlton Code, sec. 694.

Ex parte Finn (52 Pac. Rep., 756).

Same subject.

SEC. 1527. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Carter Code, sec. 695; Charlton Code, sec. 695.

Who may affirm.

SEC. 1528. Any person who has conscientious scruples against taking an oath may make his solemn affirmation.

Carter Code, sec. 696; Charlton Code, sec. 696.

Affirmation equivalent to oath; when false to be deemed perjury.

SEC. 1529. Whenever by any provision of this title an oath is required an affirmation is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

Carter Code, sec. 697; Charlton Code, sec. 697.

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# CHAPTER SEVENTY.

## OF COURTS OF JUSTICE.


Sec.
1530. Judicial power, how vested.
1531. The district court.
1532. Justice's court.
1533. Mode of proceeding.
1534. Jurisdiction of justice's court.
1535. Jurisdiction not to include certain cases.
1536. Where action may be commenced.
1537. Power of court respecting judicial proceedings.
1538. Power, how exercised.
1539. Judicial officer, definition of. When disqualified to act.
1540. Appointment of judge pro tempore.
1541. Judicial officer not to act as attorney, except.
1542. Power of a judge out of court.
1543. Power of judicial officers.
1544. Powers, how exercised.
1545. Power to take and certify affidavits.
1546. Same subject.


June 6, 1900. 31 Stat. L., 442–445. Judicial power, how vested.

SEC. 1530. The judicial power in the District of Alaska is vested in a district court, in commissioners exercising the powers of probate courts, and in commissioners as ex officio justices of the peace.

Carter Code, sec. 698; Charlton Code, sec. 698.

In re Bruno Munro (1 Alaska Rep., 282).

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The district court.

SEC. 1531. The district court is a court of general jurisdiction, civil and criminal, and also shall have admiralty jurisdiction.

Carter Code, sec. 699; Charlton Code, sec. 699.

Ex parte Cooper (143 S. Rep., 472; 1 Alaska Rep., 718, The *Nuggett* (1 Alaska Rep., 202). White's Guardian *v.* Martin (2 Alaska Rep., 495). Sylvester's Administrator *v.* Wilson's Adminr. (2 Alaska Rep., 325). In re Bruno Monro (1 Alaska Rep., 282).

Justice's court.

SEC. 1532. A justice's court is a court held by a commissioner as ex officio justice of the peace within the precinct for which he may be appointed. There are no particular terms of such court, but the same is always open for the transaction of business, according to the mode of proceeding prescribed for it.

Carter Code, sec. 700; Charlton Code, sec. 700.

In re Bruno Munro (1 Alaska Rep., 282). Hackleman *v.* Geise (1 Alaska Rep., 538). Knapp *v.* King (6 Or. Rep., 243). Finn *v.* Hyde (52 Fed. Rep., 83). White *v.* Brown (101 Pac. Rep., 900).

Mode of proceeding.

SEC. 1533. The mode of proceeding and the rules of evidence are the same in a justice's court as in a like action or proceeding in a court of record, except where otherwise specially provided.

Carter Code, sec. 701; Charlton Code, sec. 701.

Jurisdiction of justice's court.

SEC. 1534. A justice's court has jurisdiction, but not exclusive, of the following actions:

First. For the recovery of money or damages only when the amount claimed does not exceed one thousand dollars;

Second. For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed one thousand dollars;

Third. For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding one thousand dollars;

Fourth. Also to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute.

Carter Code, sec. 702; Charlton Code, sec. 702.

Moody *v.* First Bnk. of Skagway (1 Alaska Rep., 704). Bennett *v.* Forrest (69 Fed. Rep., 421; 1 Alaska Rep., 722). Myers *v.* Swineford (1 Alaska Rep., 10). Hackleman *v.* Geise (1 Alaska Rep., 568). Mitchell *v.* Galen (1 Alaska Rep., 339). Everton *v. Smith* (1 Alaska Rep., 424). Noland *v.* Costello (2 Or. Rep., 56). Kirk *v.* Matlock (7 Pac. Rep., 322). Wollenberg *v.* Haynes (57 Pac. Rep., 627). Willitts *v.* Walker (52 Pac. Rep., 24). American Loan Assn. *v.* Fulton (28 Pac. Rep., 636). S. P. Co. *v.* Russell (26 Pac. Rep., 304). Knapp *v.* King (5 Pac. Rep., 243). Finn *v.* Hyde (52 Fed. Rep., 83). Thompson *v.* Wolfe (6 Or. Rep., 308). Ferguson *v.* Reiger (73 Pac. Rep., 1040). Ferguson *v.* Byers (67 Pac. Rep., 1115). Heiney *v.* Heiney (73 Pac. Rep., 1038).

Jurisdiction not to include certain cases.

SEC. 1535. The jurisdiction conferred by the last section does not extend, however—

First. To an action in which the title to real property shall come in question;

Second. To an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction upon a promise to marry, in actions of an equitable nature, or in admiralty causes.

Carter Code, sec. 703; Charlton Code, sec. 703.

Duffey *v.* Mix (33 Pac. Rep., 807). Aiken *v.* Aiken (6 Pac. Rep., 682). Malarkey *v.* O'Leary (56 Pac. Rep., 521). Sweek *v.* Galbreath (6 Pac. Rep., 220).

Where action may be commenced.

SEC. 1536. In an action in a justice's court to recover a penalty or forfeiture given by statute, the cause of action or some part thereof

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must have arisen within the precinct where the action is commenced, or upon a lake, river, or other water bordering upon such precinct and opposite thereto; but otherwise than this the jurisdiction of justice's court does not depend upon where the cause arose, provided that the defendant shall reside in the precinct where the action is commenced, or personal service can be had on the defendant in such precinct; and if the defendant do not reside in the District, the action may be commenced in the precinct in which the plaintiff resides.

Carter Code, sec. 704; Charlton Code, sec. 704.

Taylor *v.* Jenkins (3 Pac. Rep., 681). Kirk *v.* Matlock (7 Pac. Rep., 322). Pierce *v.* Rock Creek Mining Co. (61 Pac. Rep., 348).

Power of court respecting judicial proceedings.

SEC. 1537. Every court of justice has power—

First. To preserve and enforce order in its immediate presence;

Second. To enforce order in the proceedings before it or before a person or body empowered to conduct a judicial investigation under its authority;

Third. To provide for the orderly conduct of proceedings before it or its officers;

Fourth. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court in an action or proceeding pending therein;

Fifth. To control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto;

Sixth. To compel the attendance of persons to testify in an action or proceeding therein in the cases and manner provided by this code;

Seventh. To administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Carter Code, sec. 705; Charlton Code, sec. 705.

*Rules of court*: Carney *v.* Barrett (4 Or. Rep., 171). Coyotte G. & S. Min. Co. *v.* Ruble (9 Or. Rep., 121). State *v.* Birchard (59 Pac. Rep., 468). Reynolds *v.* Jackson County (53 Pac. Rep., 1072). Garnsey *v.* County Court (54 Pac. Rep., 539). Blank *v.* Walker (53 Pac. Rep., 1133).

*Control of ministerial officers*: Schneider *v.* Sears (8 Pac. Rep., 841).

*Power over process and adjudications*: Cochran *v.* Baker (52 Pac. Rep., 520).

Power, how exercised.

SEC. 1538. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided in this code.

Carter Code, sec. 706; Charlton Code, sec. 706.

Judicial officer, definition of. When disqualified to act.

SEC. 1539. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

First. In an action or proceeding to which he is a party or in which he is directly interested;

Second. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

Third. When he is related to either party by consanguinity or affinity within the third degree;

Fourth. When he has been attorney in the action or proceeding in question for either party.

But this section does not apply to an application to change the place of trial or the regulation of the order of business in court. In the cases specified in subdivisions three and four the disqualification

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may be waived by the parties and shall be deemed to be waived unless an application be made as provided in this code.

Carter Code, sec. 707; Charlton Code, sec. 707.

Mitchell *v.* Galen (1 Alaska Rep., 339).

U. S. *v.* Pratt (3 Alaska Rep., 401, 422). "In this case the court held that the disqualifications of the judge under the Alaska Code are statutory and mere charges of bias and prejudice on the part of the judge are not sufficient to disqualify him from presiding at a trial for contempt of court."

Appointment of judge pro tempore.

SEC. 1540. Whenever it appears that the judge of the district court presiding in the division where the action is pending is disqualified under the provisions of the section last preceding the action shall be transferred to another division of said court unless a judge of another division will appear and preside during the disposition thereof: *Provided, however*, That the parties may, by written stipulation, agree upon a member of the bar of said court to try the same.

Carter Code, sec. 708; Charlton Code, sec. 708.

Lewis *v.* Johnson (90 Fed. Rep., 673); 1 Alaska Rep., 720).

U. S. *v.* Pratt (3 Alaska Rep., 401, 422). "In this case the court held that the disqualifications of the judge under the Alaska Code are statutory and mere charges of bias and prejudice on the part of the judge are not sufficient to disqualify him from presiding at a trial for contempt of court."

Judicial officer not to act as attorney, except.

SEC. 1541. Any judicial officer may act as an attorney in any action or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, or otherwise other than as in this section allowed: *Provided*, No justice of the peace or other judicial officer shall have a partner who shall practice law or act as attorney in the court over which he presides.

Carter Code, sec. 709; Charlton Code, sec. 709.

NOTE.—The word "not" must have been left out in the first line by the official transcriber.

Power of a judge out of court.

SEC. 1542. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise.

Carter Code, sec. 710; Charlton Code, sec. 710.

Marsden *v.* Harlocker (85 Pac. Rep., 328).

Power of judicial officers.

SEC. 1543. Every judicial officer has power—

First. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by this code or other statute;

Second. To compel obedience to his lawful orders, as provided in this code;

Third. To compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided in this code;

Fourth. To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties.

Carter Code, sec. 711; Charlton Code, sec. 711.

U. S. *v.* Pratt (3 Alaska Rep., 415).

Powers, how exercised.

SEC. 1544. For the effectual exercise of the powers specified in the last section, a judicial officer may punish for contempt in the cases and manner provided in this code.

Carter Code, sec. 712; Charlton Code, sec. 712.

NOTE.—As to contempts, see chap. 58 of this title.

U. S. *v.* Pratt (3 Alaska, 415).

State *v.* Kaiser (23 Pac. Rep., 964; 8 L. R. A., 584).

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Power to take and certify affidavits.

SEC. 1545. The judge of the district court has power in any part of the district to take and certify—

First. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

Second. The acknowledgment of satisfaction of a judgment in any court;

Third. An affidavit or deposition to be used in any court of justice or other tribunal of the District;

Fourth. To exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

Carter Code, sec. 713; Charlton Code, sec. 713.

Same subject.

SEC. 1546. Every other judicial officer may, within the precinct in which he is chosen—

First. Exercise the powers mentioned in subdivisions one, two, and three of the last section;

Second. Exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

Carter Code, sec. 714; Charlton Code, sec. 714.

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# CHAPTER SEVENTY-ONE.

## MISCELLANEOUS PROVISIONS RESPECTING THE COURTS AND JUDICIAL OFFICERS.


Sec.
1547. Sittings of court to be public; exceptions.
1548. Nonjudicial days; what legal business may be done.
1549. If court appoint or adjourn for such day to be deemed for next judicial day.
1550. When judge does not attend.
1551. Proceedings not affected by failure of term or vacancy.
1552. Application to court or judge, how addressed.
1553. Proceedings to be in English.
1554. Power of court to adjourn proceedings.
1555. Means to be used by court to execute its powers.


June 6, 1900.
31 Stat. L., 445–446.

Sittings of court to be public; exceptions.

SEC. 1547. The sittings of every court of justice are public, except as provided in this section. Upon the agreement of the parties to a civil action or proceeding, filed with the clerk or entered upon the journal, the court may direct the trial of an issue of law or fact, or any other proceeding therein, to be private; and upon such order being made all persons shall be excluded except the officers of the court, the parties, their witnesses, and counsel.

Carter Code, sec. 715; Charlton Code, sec. 715.

Nonjudicial days; what legal business may be done.

SEC. 1548. Courts of justice may be held and judicial business transacted on any day, except as provided in this section. No court can be opened, nor can any judicial business be transacted, on a Sunday, on a legal holiday, or on a day appointed by the Executive authority of the United States or of the District as a day of fasting or thanksgiving, except for the following purposes:

First. To give instructions to a jury then deliberating on their verdict;

Second. To receive the verdict of a jury;

Third. For the exercise of the powers of a magistrate in criminal actions, or in proceedings of a criminal nature: *Provided*, That this section shall not be so construed as to prevent the issuance of any

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writ or order for which the judge granting the same may think an emergency exists.

Carter Code, sec. 716; Charlton Code, sec. 716.

Valentine *v.* Roberts (1 Alaska Rep., 539). Ex parte Tice (49 Pac. Rep., 1038). Whitney *v.* Blackburn (21 Pac. Rep., 874).

If court appoint or adjourn for such day to be deemed for next judicial day.

SEC. 1549. If any of the days mentioned in the last section happen to be a day appointed for holding a court, or to which it is adjourned, it is deemed appointed for or adjourned to the next judicial day.

Carter Code, sec. 717; Charlton Code, sec. 717.

Valentine *v.* Roberts (1 Alaska Rep., 540).

When judge does not attend.

SEC. 1550. If no judge attend on the day appointed for holding a court before four o'clock in the afternoon, the court shall stand adjourned until the next day at nine o'clock; and if no judge attend on that day before four o'clock in the afternoon it shall then stand adjourned for the term.

Carter Code, sec. 718; Charlton Code, sec. 718.

State *v.* Turpin (103 Pac. Rep., 438).

Proceedings not affected by failure of term or vacancy.

SEC. 1551. No proceeding in a court of justice, in any action or proceeding pending therein, is affected by a vacancy in the office of the judge or by the failure of a term thereof.

Carter Code, sec. 719; Charlton Code, sec. 719.

Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 720).

Application to court or judge, how addressed.

SEC. 1552. An application or other proceeding addressed to a court shall be addressed to it by its style, as given in this code; an application or other proceeding addressed to a judicial officer shall be addressed to him by his name, without any other title than his style of office.

Carter Code, sec. 720; Charlton Code, sec. 720.

Proceedings to be in English.

SEC. 1553. Every writing in any action or proceeding whatever, in a court of justice of the District, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals in the customary manner.

Carter Code, sec. 721; Charlton Code, sec. 721.

Power of court to adjourn proceedings.

SEC. 1554. A court or judicial officer has power to adjourn any proceeding before it or him from time to time, as may be necessary, unless otherwise expressly provided by this code.

Carter Code, sec. 722; Charlton Code, sec. 722.

Young *v.* Patton (9 Or. Rep., 195).

Means to be used by court to execute its powers.

SEC. 1555. When jurisdiction is by any law of the United States conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specially pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Carter Code, sec. 723; Charlton Code, sec. 723.

White's Guardian *v.* Martin (2 Alaska Rep., 501). U. S. *v.* Yakutat & S. R. Co. (2 Alaska Rep., 632, 633). Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671). Aiken *v.* Aiken (6 Pac. Rep., 682). Carter *v.* Koshland (12 Pac. Rep., 58). Mitchell *v.* Powers (19 Pac. Rep., 647). Ladd *v.* Mason (10 Or. Rep., 315). Bailey *v.* Frush (5 Or. Rep., 140).

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# CHAPTER SEVENTY-TWO.

## OF REFEREES.

Sec.
1556. Referee, definition of.

SEC. 1556. A referee is a person appointed by the court or a judicial officer, with power— June 6, 1900. 31 Stat. L., 446. Referee, definition of.

First. To try an issue of law or of fact in a civil action or proceeding, and report thereon;

Second. To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact, or to take and report the evidence in an action of an equitable nature;

Third. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by this code.

Carter Code, sec. 724; Charlton Code, sec. 724.

NOTE.—As to trial by referee, see chap. 20 of this title. As to reference of equitable actions, see sec. 1204, chap. 39, ante.

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# CHAPTER SEVENTY-THREE.

## OF COMMISSIONERS TO ACKNOWLEDGE DEEDS.

Sec.
1557. How appointed, tenure of office, powers and duties.
Sec.
1558. Seal and oath of office, and when and where filed.

SEC. 1557. The governor may appoint as many commissioners in each State, Territory, and District of the United States as he may deem expedient, who shall hold their offices for four years, and may within the State, Territory, or District for which they are appointed, and not otherwise, take and certify— June 6, 1900. 31 Stat. L., 446-447. How appointed, tenure of office, powers and duties.

First. The proof or acknowledgment of a conveyance of real property within the District or of any other written instrument to be used or operated therein;

Second. The acknowledgment of satisfaction of any judgment of a court of this District;

Third. An affidavit or deposition to be used in any court of justice, or before any judicial officer of the District; and

Fourth. To exercise any other power, and perform any other duty, conferred or imposed upon them by this code or other statutes.

Carter Code, sec. 725; Charlton Code, sec. 725.

SEC. 1558. A commissioner appointed under the last section shall, before he can exercise the powers therein conferred, provide himself with a seal of office, and take and subscribe an oath before a judicial officer in the county, city, or town where he resides, faithfully to perform the duties of the office of a commissioner to take affidavits, depositions, and the proof and acknowledgment of deeds, out of the District, according to the laws thereof, and file such oath and an impression of such seal in the office of the secretary of the District. The secretary of the District shall collect five dollars for each certificate of appointment made under this chapter and disburse the same as provided in section three hundred and twenty-seven, Title IX, chapter 4. Seal and oath of office, when and where filed.

Carter Code, sec. 726; Charlton Code, sec. 726.

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# CHAPTER SEVENTY-FOUR.

## OF THE CLERK OF THE DISTRICT COURT.

Sec.
1559. Office hours.
1560. Deputy, duties.
1561. Can not act as attorney.
1562. Powers and duties of clerks.

June 6, 1900.
31 Stat. L., 447.
Office hours.

SEC. 1559. The clerk of the district court shall keep his office open for the transaction of business on every judicial day from nine to twelve in the forenoon and from one to five in the afternoon.

Carter Code, sec. 727; Charlton Code, 727.

Mar. 3, 1909.
35 Stat. L., 841.
Deputy clerks. Duties.

SEC. 1560. That each deputy clerk has the power to perform any act or duty relating to the clerk's office that his principal has, and his principal is responsible for his conduct and for all money received by him in his official capacity.

Amending Carter Code, sec. 728; Charlton Code, sec. 728.

State *v.* Smith (1 Or. Rep., 250).

June 6, 1900.
31 Stat. L., 447.
Can not act as attorney.

SEC. 1561. The clerk of the district court is prohibited during his continuance in office from acting or having a partner who acts as an attorney of the court of which he is clerk.

Carter Code, sec. 729; Charlton Code, sec. 729.

Powers and duties of clerks.

SEC. 1562. The clerk of the district court has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and it is the duty of such clerk—

First. To keep the seal of the court and affix it in all cases where he is required by law.

Second. To record the proceedings of the court.

Third. To keep the records, files, and other books and papers appertaining to the court.

Fourth. To file all papers delivered to him for that purpose in any action or proceeding in the court.

Fifth. To attend the terms of the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein in the presence and under the direction of the court.

Sixth. To keep the journal of the proceedings of the court at its terms and under the direction of the court to enter its orders and judgments.

Seventh. To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court or any other paper appertaining thereto and filed with him.

Eighth. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by this code or other statute.

Ninth. In the performance of his duties to conform to the direction of the court.

Carter Code, sec. 730; Charlton Code, sec. 730.

Pacific St. Whaling Co. *v.* U. S. (187 U. S. Rep., 447; 2 Alaska Rep., 697). Pacific Coast S. S. Co. *v.* U. S. (187 U. S. Rep., 454; 2 Alaska Rep., 697). Fisher *v.* Union County (72 Pac. Rep., 797).

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# CHAPTER SEVENTY-FIVE.

## OF ATTORNEYS.

Sec.
1563. When cause may be prosecuted or defended in person or by attorney.
1564. Attorney a public officer; who may act as such.
1565. Application for admission and proof thereon.
1566. Women may be admitted.
1567. Oath of office; order of admission.
1568. Attorneys of other States and countries may appear as counsel.

June 6, 1900.
31 Stat. L., 448.

When cause may be prosecuted or defended in person or by attorney.

SEC. 1563. Any action or proceeding may be prosecuted or defended by a party in person or by attorney, except that the United States or a corporation, either public or private, appears by attorney in all cases; and where a party appears by attorney the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party.

Carter Code, sec. 731; Charlton Code, sec. 731.

Multnomah L. & B. Co. *v.* Weston B. & B. Co. (99 Pac. Rep., 1046).

Attorney a public officer; who may act as such.

SEC. 1564. An attorney is a public officer, but any person may act in that capacity who has been admitted as such by the district court of the District, or may be hereafter admitted, as provided in this chapter.

Carter Code, sec. 732; Charlton Code, sec. 732.

Application for admission and proof thereon.

SEC. 1565. An applicant for admission as attorney must apply to the district court, and must show—

First. That he is a citizen of the United States, or has declared his intention to become such, and is a resident of said District, and of the age of twenty-one years, which proof may be made by his own affidavit.

Second. That he is a person of good moral character, which may be proved by any evidence satisfactory to the court.

Third. That he has the requisite learning and ability, which must be shown by the examination of the applicant by the judges, or under their direction, at the term at which the application is made.

Carter Code, sec. 733; Charlton Code, sec. 733.

Women may be admitted.

SEC. 1566. Hereafter women shall be admitted to practice law as attorneys in the courts of said District upon the same terms and conditions as men.

Carter Code, sec. 734; Charlton Code, sec. 734.

Oath of office; order of admission.

SEC. 1567. If, upon the examination, the applicant be found qualified, the court shall administer an oath to the applicant to support the Constitution and laws of the United States and of the District, and to faithfully and honestly demean himself or herself in office. The court shall then direct an order to be entered to the effect that the applicant is a citizen of the United States and of the District, of the age of twenty-one years, of good moral character, and possessed of the requisite learning and ability to practice as an attorney in all the courts of the District, and has taken the oath of office; and upon the entry of the order and payment of the legal fee he or she is entitled to practice as such attorney, and not otherwise.

Carter Code, sec. 735; Charlton Code, 735.

Attorneys of other States and countries may appear as counsel.

SEC. 1568. Whenever an applicant for admission as attorney shall present to the district court a certificate showing him to have been duly admitted to practice as an attorney in the highest courts of any State or Territory of the United States, or in one of the circuit courts or the Supreme Court of the United States, such applicant may be admitted to practice as an attorney without further examination.

Carter Code, sec. 736; Charlton Code, sec. 736.

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# CHAPTER SEVENTY-SIX.

## OF THE DUTIES OF ATTORNEYS, AND THEIR AUTHORITY.

Sec.
1569. Authority of an attorney.
1570. Proceedings when party alleges that attorney appears for him without authority.
1571. When attorney may be compelled to show authority.
1572. Attorney, how changed.
1573. Notice of change.
1574. Lien of attorneys.
1575. By what court and for what causes an attorney may be removed or suspended.
1576. By whom the proceedings to be instituted.
1577. Accusation, how made.
1578. Order for accused to appear and answer.
1579. If accused do not appear, court to proceed.
1580. May demur to or controvert the accusation.
1581. If demurrer not sustained must answer forthwith; judgment for want of answer or trial.
1582. Accusation on knowledge of the court presumed to be true, but may be shown otherwise.
1583. Proceeding to compel an attorney to deliver over money or papers.
1584. How court to proceed if attorney claim a lien.

June 6, 1900.

31 Stat. L., 449–451.

Authority of an attorney.

SEC. 1569. An attorney has authority—

First. To bind his client in any of the proceedings in an action or proceeding by his agreement filed with the clerk or entered upon the journal of the court, and not otherwise.

Second. To receive money or property claimed by his client in an action or proceeding during the pendency thereof, or within three years after judgment, and, upon the payment or delivery thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. But this section does not prevent a party from employing a new attorney to issue execution upon a judgment, or to take the other proceedings prescribed by this code for its enforcement, and when he does so the authority of the former attorney ceases.

Carter Code, sec. 737; Charlton Code, sec. 737.

Bonnifield *v.* Thorp (71 Fed. Rep., 924; 1 Alaska Rep., 706). Harniska *v.* Dolph (133 Fed. Rep., 158; 60 C. C. A., 224; 2 Alaska Rep., 691). Miocene Ditch Co. *v.* Moore, judge (150 Fed. Rep., 483; 80 C. C. A., 301). Miocene Ditch Co. *v.* Campion M. & T. Co. (150 Fed. Rep., 483; 80 C. C. A., 301). Barr *v.* Rader (49 Pac. Rep., 962). Holt *v.* Idleman (54 Pac. Rep., 279). Nightingale *v.* Ore. Cent. R. Co. (2 Saw. Rep., 328). Lucky Queen Min. Co. *v.* Abraham (38 Pac. Rep., 65). Glenn *v.* Savage (13 Pac. Rep., 442). Lord *v.* Hamilton (56 Pac. Rep., 525). Fleshman *v.* Meyer (80 Pac. Rep., 209). Haywood Bros. & Wakefield Co. *v.* Doernberger Mfg. Co. (86 Pac. Rep., 357). Multnomah L. & B. *v.* Weston B. & B. Co. (99 Pac. Rep., 1046).

Proceedings when party alleges that attorney appears for him without authority.

SEC. 1570. If it be alleged by a party for whom an attorney appears that he does so without authority, and the allegation be verified by the affidavit of the party, the court may, if it find the allegation true, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his act.

Carter Code, sec. 738; Charlton Code, sec. 738.

Lucky Queen Min. *v.* Abraham (38 Pac. Rep., 65). Handley *v.* Jackson (50 Pac. Rep., 915).

When attorney may be compelled to show authority.

SEC. 1571. The court or judge thereof may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the party for whom he assumes to appear.

Carter Code, sec. 739; Charlton Code, sec. 739.

Bonnifield *v.* Thorpe (71 Fed. Rep., 924; 1 Alaska Rep., 706).

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Attorney, how changed.

SEC. 1572. The attorney in an action or proceeding may be changed at any time before judgment or final determination, as follows:

First. Upon his own consent, filed with the clerk or entered upon the journal; or,

Second. Upon the order of the court or judge thereof, on the application of the client or the attorney, for sufficient cause.

Carter Code, sec. 740; Charlton Code, sec. 740.

Notice of change.

SEC. 1573. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party. Until then, he is bound to recognize the former attorney.

Carter Code, sec. 741; Charlton Code, sec. 741.

Shirley *v.* Burch (18 Pac. Rep., 351).

Lien of attorneys.

SEC. 1574. An attorney has a lien for his compensation, whether specially agreed upon or implied, as provided in this section—

First. Upon the papers of his client which have come into his possession in the course of his professional employment;

Second. Upon money in his hands belonging to his client;

Third. Upon money in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party;

Fourth. Upon a judgment to the extent of the costs included therein, or, if there be a special agreement, to the extent of the compensation specially agreed on, from the giving notice thereof to the party against whom the judgment is given and filing the original with the clerk where such judgment is entered and docketed. This lien is, however, subordinate to the rights existing between the parties to the action or proceeding.

Carter Code, sec. 742; Charlton Code, sec. 742.

Nodine *v.* Hannum (1 Alaska Rep., 303). Gilmore *v.* McBride (156 Fed. Rep., 464; 84 C. C. A., 274). Wooding *v.* Crane (39 Pac. Rep., 442). State *v.* Lucas (33 Pac. Rep., 538). Stoddard *v.* Lord (59 Pac. Rep., 710). Day *v.* Larson (47 Pac. Rep., 101). Ford *v.* Gilbert (75 Pac. Rep., 138). Jackson *v.* Sterns (84 Pac. Rep., 798). Sterns *v.* Wollenburg (92 Pac. Rep., 1079). Wagner *v.* Goldschmidt (93 Pac. Rep., 689).

By what court and for what causes an attorney may be removed or suspended.

SEC. 1575. An attorney may be removed or suspended by the district court for either of the following causes, arising after his admission to practice:

First. Upon his being convicted of any felony or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence;

Second. For a willful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession;

Third. For being guilty of any willful deceit or misconduct in his profession.

Carter Code, sec. 743; Charlton Code, sec. 743.

U. S. *v.* Clark (76 Fed. Rep., 560; 1 Alaska Rep., 707). State *v.* Winton (5 Pac. Rep., 337). Ex parte Thompson (52 Pac. Rep., 570; 40 L. R. A., 195). Ex parte Miller (60 Pac. Rep., 999). Ex parte Finn (52 Pac. Rep., 756). Ex parte Pilkington (46 Pac. Rep., 1118). Ex parte St. Rayner (70 Pac. Rep., 537). Ex parte Turner (89 Pac. Rep., 426). Cobb *v.* U. S. (172 Fed. Rep., 641; 96 C. C. A., 477). Ex parte Cowing (38 Pac. Rep., 1090). Ex parte Mason (43 Pac. Rep., 651). Ex parte Kindt (52 Pac. Rep., 187). Ex parte Tongue (43 Pac. Rep., 717). Ex parte Eastham (80 Pac. Rep., 1057). State *v.* Tanner (88 Pac. Rep., 301). State *v.* Biggs (97 Pac. Rep., 713). Barnes *v.* Lyons, Judge (187 Fed. Rep., 881).

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By whom the proceedings to be instituted.

SEC. 1576. The proceeding to remove an attorney as provided in the last section shall be taken by the court, of its own motion, for matters within its knowledge, or that of any of the judges thereof; otherwise it may be taken upon the information of another.

Carter Code, sec. 744; Charlton Code, sec. 744.

Cobb *v.* U. S. (172 Fed. Rep., 641).

Accusation, how made.

SEC. 1577. If the proceedings be upon the motion of the court or judges thereof, for matters within its knowledge, the accusation shall be made by an order of the court reciting the facts charged. If upon the information of another, the accusation must be presented to the court, in writing, and verified by the oath of the person making it, or of some other person, to the effect that the charges therein contained are true, as he believes.

Carter Code, sec. 745; Charlton Code, sec. 745.

Order for accused to appear and answer.

SEC. 1578. After the accusation has been made or received the court shall forthwith make an order requiring the accused to appear and answer the accusation at a specified time in the same or a subsequent term, and shall cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order to appear and answer. But when the proceeding is upon the information of another, the accusation shall be dismissed at once unless it appear therefrom that the accused should be required to appear and answer the same.

Carter Code, sec. 746; Charlton Code, sec. 746.

If accused do not appear, court to proceed.

SEC. 1579. The accused must appear at the time appointed in the order and answer the accusation, unless, for sufficient cause, the court assign another day for that purpose. If he do not appear, the court may proceed and determine the accusation in his absence.

Carter Code, sec. 747; Charlton Code, sec. 747.

May demur to or controvert the accusation.

SEC. 1580. The accused may demur to the accusation for insufficiency or controvert it by answer. The demurrer and answer shall be in writing, and the latter shall be verified by the oath of the accused in the same manner as a pleading in an action.

Carter Code, sec. 748; Charlton Code, sec. 748.

If demurrer not sustained must answer forthwith; judgment for want of answer or trial.

SEC. 1581. If a demurrer, for insufficiency, be not sustained, the accused shall answer forthwith. If he plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he controvert the matters charged, the court shall then, or at such time as it may appoint, proceed to try the accusation, and give a judgment of removal, suspension, or acquittal, according to law and the right of the case.

Carter Code, sec. 749; Charlton Code, sec. 749.

Accusation on knowledge of the court presumed to be true, but may be shown otherwise.

SEC. 1582. When an accusation is made upon the knowledge of the court, or the judges thereof, the facts shall be set forth as in other cases, and the accused may controvert the accusation, whereupon the issues of fact shall be by the court referred to at least three disinterested members of the bar, who shall report their findings of fact to the court, and the judgment of the court shall be entered according to such findings.

Carter Code, sec. 750; Charlton Code, sec. 750.

Cobb *v.* U. S. (172 Fed. Rep., 641; 96 C. C. A., 477). Barnes *v.* Lyons, Judge (187 Fed. Rep., 881).

Proceeding to compel an attorney to deliver over money or papers.

SEC. 1583. When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in a judicial proceeding

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or not, he may be required, by an order of the court, to do so within a specified time or show cause why he should not be punished for a contempt.

Carter Code, sec. 751; Charlton Code, sec. 751.

Nodine *v.* Hannum (1 Alaska Rep., 302).

How court to proceed if attorney claim a lien.

SEC. 1584. If, however, the attorney claim a lien upon the money or papers, under the provisions of section fifteen hundred and seventy-four, the court shall—

First. Impose, as a condition of making the order, that the client give security, in form and amount to be directed, to satisfy the lien when determined in an action; or,

Second. Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or,

Third. Direct the trial of the controversy by a jury, or refer it, and upon the verdict or report determine the same as in other cases.

Carter Code, sec. 752; Charlton Code, sec. 752.

Nodine *v.* Hannum (1 Alaska Rep., 304).

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## CHAPTER SEVENTY-SEVEN.

### OF RECEIVERS.

Sec.
1585. In what cases he may be appointed.
Sec.
1586. His oath and undertaking.

June 6, 1900.
31 Stat. L., 451.
In what cases he may be appointed.

SEC. 1585. A receiver may be appointed in any civil action or proceeding, other than an action for the recovery of specific personal property—

First. Provisionally, before judgment, on the application of either party, when his right to the property which is the subject of the action or proceeding, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired;

Second. After judgment, to carry the same into effect;

Third. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply his property in satisfaction of the judgment;

Fourth. In cases provided in this code, or by other statutes, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;

Fifth. In the cases when a debtor has been declared insolvent.

Carter Code, sec. 753; Charlton Code, sec. 753.

In re McKenzie (180 U. S. Rep., 536; 1 Alaska Rep., 811). Tornanses *v.* Melsing (106 Fed. Rep., 775; 45 C. C. A., 615; 1 Alaska Rep., 696). Decker Bros. *v.* Burners Bay M. & M. Co. (2 Alaska Rep., 504). Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 325). In re Noyes, in re Geary, in re Wood, in re Frost (121 Fed. Rep., 209; 57 C. C. A., 445; 2 Alaska Rep., 657). Decker Bros. *v.* Burners Bay Min. Co. (3 Alaska Rep., 293). Cascaden *v.* Dunbar (3 Alaska Rep., 671). Kuzek *v.* Magaha (148 Fed. Rep., 618). Internat. Trust Co. *v.* Decker Bros. (152 Fed. Rep., 78; 81 C. C. A., 302). Nowell *v.* Internat. Tr. Co. (169 Fed. Rep., 497; 94 C. C. A., 589).

*Generally*: Fleming *v.* Carson (62 Pac. Rep., 374). Durheimer *v.* Hellner (33 Pac. Rep., 401). Wellman *v.* Harker (3 Or. Rep., 253). Pope *v.* Ames (25 Pac. Rep., 393). Tolman *v.* Casey (13 Pac. Rep., 669). McNary *v.* Bush (56 Pac. Rep., 646). Rockwell *v.* Portland Sav. Bank (50 Pac. Rep., 566). Re Assignment of Hamilton (38 Pac. Rep., 1088). Goodnough *v.* Gatch (60 Pac. Rep., 383).



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Farmers Loan Co. *v.* Or. Pac. R. Co. (48 Pac. Rep., 706; 38 L. R. A., 424). Thompson *v.* Holladay (14 Pac. Rep., 725). The Holladay case (29 Fed. Rep., 226). Ford *v.* Gilbert (75 Pac. Rep., 138). Tobin *v* Portland Flour Co. (68 Pac. Rep., 749). U. S. Inv. Corpn. *v.* Portland Hospital (67 Pac. Rep., 194). Egan *v.* N. A. Sav. L. & B. Co. (76 Pac. Rep., 774). Baker *v.* Williams & England Bank Co. (70 Pac. Rep., 711). Nowell *v.* Internat. Tr. Co. (169 Fed. Rep., 497; 94 C. C. A., 589). Wills *v.* Nehalam Coal Co. (96 Pac. Rep., 528).

*Appeal*: Steel *v.* Holladav (22 Pac. Rep., 535). Martin *v.* Martin (12 Pac. Rep., 234). Kerslake *v.* Brower & Thompson Lbr. Co. (66 Pac. Rep., 437). First Nat. Bank *v.* Or. Paper Co. (71 Pac. Rep., 144). Wilder *v.* Reed (78 Pac. Rep., 1027). Nowell *v.* Internat. Tr. Co. (169 Fed. Rep., 497; 94 C. C. A., 589).

*Compensation*: Martin *v.* Martin (12 Pac. Rep., 234). Thompson *v.* Willamette Mfg. Co. (16 Pac. Rep., 647). Hembree *v.* Dawson (23 Pac. Rep., 264). Steel *v.* Holladay (25 Pac. Rep., 77). First Nat. Bank *v.* Or. Paper Co. (71 Pac. Rep., 144). Tobin *v.* Port Flour Mill Co. (68 Pac. Rep., 749). Ford *v.* Gilbert (71 Pac. Rep., 971). Nowell *v.* Internat. Tr. Co. (169 Fed. Rep., 497; 94 C. C. A., 589).

His oath and undertaking.

SEC. 1586. A receiver, before entering upon his duties, shall be sworn faithfully to perform his trust to the best of his ability, and shall also file with the clerk of the court an undertaking, of one or more sufficient sureties, in a specified sum, to be fixed by the court or judge thereof, to the effect that he will faithfully discharge the duties of receiver and will obey the orders of the court or judge thereof in respect thereto. The sureties must justify in the same manner as bail upon an arrest.

Carter Code, sec. 754; Charlton Code, sec. 754.

## CHAPTER SEVENTY-EIGHT.

### OF THE TRIAL FEE.


Sec.
1587. Trial fees.
1588. Amount of.
1589. Recovered as disbursement.
1590. Public corporation need not pay.
1591. In justice's court, when and to whom paid.
1592. When party too poor to pay.
1593. Trial fee to be paid to the clerk.
1594. Trial fee in justice's court.


June 6, 1900.
31 Stat. L., 451–452.
Trial fees.

SEC. 1587. Parties to a judicial proceeding are required to contribute toward the expense of maintaining courts of justice, or a particular action or proceeding therein, by the payment of certain sums of money, as provided in this chapter, which are denominated trial fees.

Carter Code, sec. 755; Charlton Code, sec. 755.

Johnston *v.* Sutherland, No. 1255, Second Division (unreported).

Amount of.

SEC. 1588. The trial fee is as follows:

First. In the district court, for every trial by jury, twelve dollars; for every trial by the court, six dollars; for every judgment given without trial, three dollas;

Second. In justice's court, for every trial by jury, six dollars.

Carter Code, sec. 756; Charlton Code, sec. 756.

U. S. *v.* Madigan (3 Alaska Rep., 76).

Recovered as disbursement.

SEC. 1589. The trial fee is to be paid by the plaintiff, appellant, or moving party before he is entitled to or can claim the trial or other proceeding upon which such fee is imposed; and if the party paying such fee prevail in the action, or proceeding, so as to be entitled to recover costs therein, such fee shall be allowed and taxed as a disbursement and collected off the adverse party.

Carter Code, sec. 757; Charlton Code, sec. 757.

U. S. *v.* Madigan (3 Alaska Rep., 76). | Bailey *v.* Frush (5 Or. Rep., 136).

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Public corporation need not pay.

SEC. 1590. When the United States or any public corporation is a party to a judicial proceeding it need not pay the trial fee in advance, and if it be entitled to recover costs therein, such fee shall be allowed and taxed in its favor as a disbursement and collected off the adverse party as in ordinary cases.

Carter Code, sec. 758; Charlton Code, sec. 758.

U. S. *v.* Madigan (3 Alaska Rep., 76).

In justice's court, when and to whom paid.

SEC. 1591. The trial fee in a justice's court shall be paid to the justice for the demand for a jury, and unless so paid the demand shall be disregarded and the trial proceed as if no such demand had been made, except when a party is prosecuted in a criminal action at the suit of the United States, in which case the party is entitled to a jury trial without the prepayment of such fee; and if judgment be given against him, the fee shall be allowed and taxed in favor of the United States as other disbursements in ordinary cases.

Carter Code, sec. 759; Charlton Code, sec. 759.

Johnston *v.* Sutherland, No. 1255, Second Division (unreported).

U. S. *v.* Madigan (3 Alaska Rep., 76).

NOTE.—See also sec. 1804, chap. 95, of this title.

When party too poor to pay.

SEC. 1592. If at any time it appear to the satisfaction of the court or judge thereof, from the affidavit of the party or other evidence, that he can not pay the trial fee, such court or judge may direct that he be allowed to proceed without the prepayment thereof; but if such party prevail so as to be entitled to collect such fee as a disbursement off the adverse party, when collected it shall be retained by the clerk as if paid in advance.

Carter Code, sec. 760; Charlton Code, sec. 760.

Trial fee to be paid to the clerk.

SEC. 1593. The trial fees shall be paid to the clerk of the court, who shall keep a regular account of them and by whom paid in his fee book, and deposit them in the manner provided in the case of other moneys collected by virtue of his office.

Carter Code, sec. 761; Charlton Code, sec. 761.

Trial fee in justice's court.

SEC. 1594. In justice's court the trial fee shall be paid to a justice. He shall keep an account of them and by whom paid, and distribute the amount among the jury in the particular case in payment of their legal fees.

Carter Code, sec. 762; Charlton Code, sec. 762.

NOTE.—See sec. 1804, chap. 95, of this title.

## CHAPTER SEVENTY-NINE.

### OF GENERAL PROVISIONS RESPECTING THE ADMINISTRATION OF ESTATES.


Sec.
1595. Probate jurisdiction of commissioner.
1596. Forms of pleadings.
1597. Nature of procedure.
1598. Books and records.
1599. Index to such books.
1600. Costs and disbursements.
1601. Orders and decrees for the payment of money, how enforced.


June 6, 1900.
31 Stat. L., 452–453.
Probate, jurisdiction of commissioner.

SEC. 1595. The commissioners appointed in pursuance of this act and other laws of the United States have jurisdiction within their respective precincts, subject to the supervision of the district judge, in all testamentary and probate matters; that is—

First. To take proof of wills;

Second. To grant and revoke letters testamentary, of administration, and of guardianship;

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Third. To direct and control the conduct and settle the accounts of executors, administrators, and guardians;

Fourth. To direct the payment of debts and legacies and the distribution of the estates of intestates;

Fifth. To order the sale and disposal of the real and personal property of deceased persons;

Sixth. To order the renting, sale, or other disposal of the real and personal property of minors;

Seventh. To take the care and custody of the person and estate of a lunatic or habitual drunkard and to appoint and remove guardians therefor; to direct and control the conduct of such guardians and to settle their accounts;

Eighth. To direct the admeasurement of dower.

Carter Code, sec. 763; Charlton Code, sec. 763.

Ex parte Emma (48 Fed. Rep., 211; 1 Alaska Rep., 719). Kohn *v.* McKinnon (90 Fed. Rep., 623; 1 Alaska Rep., 744). White's Guardian *v.* Martin (2 Alaska Rep., 495). Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 325, 333). Linge's Adminr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 16, 20). Decker *v.* Decker (3 Alaska Rep., 122, 123). Cheney *v.* Alaska Treadwell G. M. Co. (148 Fed. Rep., 808).

*Subdivision 2*: Linge's Adminr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 28). Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 333).

*Generally*: Ramp *v.* McDaniel (6 Pac. Rep., 456). Monastes *v.* Catlin (6 Or. Rep., 119). Winkle *v.* Winkle (8 Or. Rep., 193). Hanner *v.* Silver (2 Or. Rep., 336). Gardner *v* Gillihan (27 Pac. Rep., 220). Re Bolander's Estate (63 Pac. Rep., 689). Dray *v.* Bloch (45 Pac. Rep., 772). Richardson Guardianship (64 Pac. Rep., 390). Trutch *v.* Bunnell (4 Pac. Rep., 558). Heirs of Clark *v.* Ellis (9 Or. Rep., 128). Trustin *v.* Gaunt (4 Or. Rep., 305). Jones *v.* Dove (6 Or. Rep., 191). Holmes *v.* O. & C. R. Co. (5 Fed. Rep., 523). Hubbard *v.* Hubbard (7 Or. Rep., 42). Russell *v.* Lewis (3 Or. Rep., 380). Adams *v.* Petrain (3 Pac. Rep., 163). Herrn's Estate (66 Pac. Rep., 688). Steel *v.* Holladay (25 Pac. Rep., 69). Ballinger *v.* Thompson (37 Pac. Rep., 714). Willamette Falls Co. *v.* Gordon (6 Or. Rep., 175). In re John's Will (47 Pac. Rep., 341; 36 L. R. A., 242). Re Plunkett's Estate (54 Pac. Rep., 152). Thompson *v.* Dekum (52 Pac. Rep., 517, 755). Froebrich *v.* Lane (76 Pac. Rep., 351). Gatch *v.* Simpson (66 Pac. Rep., 688).

NOTE.—As to jurisdiction over insane, see sec. 831, chap. 39, Civil Code, Title XII.

As to bids for care of insane in asylum, see sec. 830, chap. 39, Title XII, Civil Code.

Forms of pleadings.

SEC. 1596. There are no particular pleadings or forms thereof in proceedings before commissioners when exercising the jurisdiction of probate matters, as specified in the section last preceding, other than as provided in this chapter.

Carter Code, sec. 764; Charlton Code, sec. 764.

In re Roach's Estate (92 Pac. Rep., 118).

Nature of procedure.

SEC. 1597. The mode of proceeding is in the nature of a suit in equity as distinguished from an action at law. The proceedings are in writing, and are had upon the application of a party or the order of the court. The court exercises its powers by means of—

First. A citation to the party;

Second. An affidavit or the verified petition or statement of a party;

Third. A subpœna to a witness;

Fourth. Orders, judgments, and decrees;

Fifth. An execution of warrant to enforce them.

Carter Code, sec. 765; Charlton Code, sec. 765.

Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 679). Johnston *v.* Shofner (31 Pac. Rep., 254). Wilkes *v.* Cornelius (28 Pac. Rep., 135). Re Plunkett's Estate (54 Pac. Rep., 152). Rostel *v.* Moret (23 Pac. Rep., 900). Wright *v.* Edwards (10 Or. Rep., 301). Gatch *v.* Simpson (66 Pac. Rep., 688). Lawrey *v.* Stirling (69 Pac. Rep., 460). In re Morrison's Estate (87 Pac. Rep., 1043). In re Roach's Estate (92 Pac. Rep., 118).

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Books and records.

SEC. 1598. The proceedings in probate matters shall be entered and recorded in the following books:

First. A register, in which shall be entered a memorandum of all official business transacted by the court or judge thereof appertaining to the estate of each person deceased under the name of such person; that pertaining to the guardianship of an infant under the name of such infant; that pertaining to an insane person or a drunkard under his name;

Second. A record of wills, in which shall be recorded all wills proven before the court or judge thereof, with the order of probate thereof, and of all wills proved elsewhere upon which letters of administration are issued by the direction of such court or judge;

Third. A record of the appointment of administrators, whether general or special, or of a partnership and of executors;

Fourth. A record of the appointment of guardians of infants, insane persons, and drunkards;

Fifth. A record of accounting and distribution, in which shall be entered a summary balance sheet of the accounts of administrators, executors, and guardians, with the orders and decrees relating to the same; a memorandum of executions issued thereon, with a note of satisfaction when satisfied; also orders and decrees relating to the sale of real property and to the distribution of the proceeds thereof; and notices of all money or securities paid or deposited in court as proceeds of such sales or otherwise; and a statement showing the names of creditors, and the debts established and entitled to distribution, the amount to which each person is entitled out of such fund, and the amount actually paid to each person, and when paid;

Sixth. A record of the appointment of admeasurer of dower, with all orders and decrees relating to the same, and the admeasurer's report;

Seventh. An order book, in which shall be entered orders directing the conduct of executors, administrators, or guardians; orders for publication of notice to creditors; orders in behalf of creditors, directing debts to be paid or allowing an execution to be issued; appointments of special guardians, appraisers, and referees; orders relating to the production of a will, to removal of executors, administrators, or guardians, or to sureties therefor; and, generally, all other orders not required to be entered in some other book.

Carter Code, sec. 766; Charlton Code, sec. 766.

Index to such books.

SEC. 1599. To each of such books there shall be attached an index, securely bound in the volume, referring to the entries or records, in alphabetical order, under the name of the person to whose estate or business they relate, and naming the page of the book where the entry or record is made.

Carter Code, sec. 767; Charlton Code, sec. 767.

Costs and disbursements.

SEC. 1600. Costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely, but such costs can not exceed those allowed in the trial of a civil action in the district court. Witness fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner.

Carter Code, sec. 768; Charlton Code, sec. 768.

Orders and decrees for the payment of money, how enforced.

SEC. 1601. Orders, judgments, or decrees for the payment of money may be enforced, by execution or otherwise, in the same manner as orders, judgments, or decrees for the payment of money in the district court.

Carter Code, sec. 769; Charlton Code, sec. 769.

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# CHAPTER EIGHTY.

## OF THE COMMISSIONERS' COSTS IN THE EXERCISE OF PROBATE JURISDICTION.

Sec.
1602. Commissioners shall have seal and may appoint clerk.
1603. Schedule of fees.

June 6, 1900.
31 Stat. L., 454. Commissioners, probate jurisdiction of, etc.
Seal.
Appoint clerk.

SEC. 1602. In the exercise of the jurisdiction conferred upon commissioners by this code in the administration of the estates of deceased persons, and of minors, lunatics, and habitual drunkards, such commissioners shall sit as a probate court, which shall be always open for the transaction of business. Such court shall have a seal, upon which there shall be engraved the words "Probate court, District of Alaska, ——— precinct;" and such courts may appoint a clerk who shall have the authority to attest such seal when attached to the lawful orders and certificates of such court.

Carter Code, sec. 770; Charlton Code, sec. 770.

Mar. 3, 1909.
35 Stat. L., 842. Schedule of commissioners' fees repealed (31 Stat. L., 454).
Attorney general to prepare schedule.

SEC. 1603. That section seven hundred and seventy-one of chapter eighty, Title II, of said Act, approved June sixth, nineteen hundred, be, and the same is hereby repealed, and the Attorney General is authorized and directed to prescribe a schedule of fees for services rendered by the United States Commissioners acting as ex officio probate judges.

Carter Code, sec. 771; Charlton Code, sec. 771, which both are repealed by above section.

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# CHAPTER EIGHTY-ONE.

## OF THE PROOF OF WILLS AND THE APPOINTMENT OF EXECUTORS AND ADMINISTRATORS.

Sec.
1604. In what precinct will may be proven.
1605. Letters testamentary with the will annexed.
1606. Who entitled to letters of administration.
1607. When persons entitled must apply.
1608. Administration to be granted to the husband, unless.
1609. Undertaking of executor or administrator.
1610. Qualification and justification of sureties.
1611. Nonresidents and minors as executors.
1612. Special administrator.
1613. Petition to state facts.
1614. When will found after administration granted.
1615. Heir may apply for removal of executor or administrator.
1616. Nonresident executor or administrator may be removed.
1617. New undertaking when old insufficient.
1618. Effect of new undertaking or failure to give it.
1619. Effect of vacancy.
1620. New administrator may maintain action against former one.
1621. Power of the court over an administrator.
1622. When deceased a member of a copartnership.
1623. Partnership property may be administered by surviving partner.
1624. His power and duties in such cases.
1625. Undertaking of administrator of the partnership.
1626. When administration of partnership property devolves upon the general administrator.
1627. Duty of surviving partner toward administrator.
1628. How last section may be enforced.
1629. Who not qualified to act as executor or administrator.
1630. Form of letters testamentary.
1631. Form of letters of administration.
1632. Resignation of executor or administrator.

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June 6, 1900.
31 Stat. L., 454–459.

SEC. 1604. Proof of a will shall be taken by the commissioner as follows:

In what precinct will may be proven.

First. When the testator, at or immediately before his death, was an inhabitant of the precinct in whatever place he may have died;

Second. When the testator, not being an inhabitant of the District, shall have died in the precinct, leaving assests therein;

Third. When the testator, not being an inhabitant of the District, shall have died out of the District, leaving assets in the precinct;

Fourth. When the testator, not being an inhabitant of the District, shall have died out of the District, not leaving assets therein, but where assests thereafter came into the precinct;

Fifth. When real property, devised by the testator, is situated in the precinct and no other commissioner has gained jurisdiction under either of the preceding subdivisions of this section.

Carter Code, sec. 772; Charlton Code, sec. 772.

Linge's Admnr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 20). Holmes *v.* O. & C. R. Co. (5 Fed. Rep., 523; 9 Fed. Rep., 229). Chow *v.* Brockway (28 Pac. Rep., 384). Malone *v.* Cornelius (55 Pac. Rep., 536). Henkle *v.* Slate (68 Pac. Rep., 399).

Letters testamentary with the will annexed.

SEC. 1605. When a will is proven, letters testamentary shall be issued to the persons therein named as executors or to such of them as give notice of their acceptance of the trust and are qualified. If all the persons therein named decline to accept or be disqualified, letters of administration, with the will annexed, shall be issued to the person to whom the administration would have been granted if there had been no will.

Carter Code, sec. 773; Charlton Code, sec. 773.

Hubbard *v.* Hubbard (7 Or. Rep., 42). Ramp *v.* McDaniel (6 Pac. Rep., 456). In re John's Will (47 Pac. Rep., 341; 36 L. R. A., 242). Chow *v.* Brockway (28 Pac. Rep., 384). Holladay *v.* Holladay (19 Pac. Rep., 81).

Who entitled to letters of administration.

SEC. 1606. Administration of the estate of an intestate shall be granted by the commissioner authorized to take proof of a will as prescribed in section sixteen hundred and four in case such intestate had made a will. Administration shall be granted, and letters thereof issued, as follows:

First. To the widow or next of kin, or both, in the discretion of the court;

Second. To one or more of the principal creditors; or

Third. To any other person competent and qualified whom the court may select.

Carter Code, sec. 774; Charlton Code, sec. 774.

Linge's Admnr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 28). Ramp *v.* McDaniel (6 Pac. Rep., 456). Cusick *v.* Hammer (36 Pac. Rep., 525). Henkle *v.* Slate (68 Pac. Rep., 399).

When persons entitled must apply.

SEC. 1607. The persons named in the subdivisions of the last section, if qualified and competent for the trust, shall be entitled to the administration in the order therein named. If those named in subdivision one do not apply for the administration within thirty days from the decease of the intestate, they shall be deemed to have renounced their right thereto; but the commissioner in his discretion may, if they reside within the precinct, direct that a citation issue to them, requiring them within such period to apply for or renounce their right of administration; and if the persons named in subdivision two do not make such application within forty days from such decease, they shall be deemed to have renounced their right to the administration also.

Carter Code, sec. 775; Charlton Code, sec. 775.

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Administration to be granted to the husband unless.

SEC. 1608. If the deceased were a married woman the administration of her estate shall in all cases be granted to her husband, if he be qualified and competent for the trust and apply therefor within thirty days from her decease, unless by force of a marriage settlement or otherwise she shall have made some testamentary disposition of her property which shall render it necessary and proper to grant the administration to some other person.

Carter Code, sec. 776; Charlton Code, sec. 776.

Undertaking of executor or administrator.

SEC. 1609. No executor or administrator is authorized to act as such until he shall file with the commissioner having jurisdiction of the estate an undertaking in a sum not less than double the probable value of the estate, with one or more sufficient sureties, to be approved by the commissioner, to be void upon condition that such executor or administrator shall faithfully perform the duties of his trust according to law: *Provided*, When by the terms of his will a testator shall expressly declare that no bonds shall be required of his executor, such executor may act upon taking an oath to faithfully fulfill trust without filing the undertaking in this section mentioned: *Provided further*, Such executor shall be criminally and civilly liable as other executors and administrators are for any dereliction of duty.

Carter Code, sec. 777; Charlton Code, sec. 777.

Decker *v.* Decker (3 Alaska Rep., 121). Ballinger *v.* Thompson (37 Pac. Rep., 714). Evarts *v.* Steger (6 Or. Rep., 55). Levy *v.* Riley (4 Or. Rep., 392). Hamlin *v.* Kinney (2 Or. Rep., 91). Palicio *v.* Bigne (13 Pac. Rep., 765).

Qualification and justification of sureties.

SEC. 1610. Whenever the penal sum mentioned in the undertaking prescribed in the preceding section exceeds two thousand dollars, three or more sureties may become severally liable for portions of the sums if the aggregate sum for which such sureties became liable shall equal the penal sum required in the undertaking.

Carter Code, sec. 778; Charlton Code, sec. 778.

Nonresidents and minors as executors.

SEC. 1611. If a person be named in a will as executor who is a nonresident of the district or a minor, upon the removal of such disability he is entitled to qualify as such executor, if he apply therefor within thirty days from the removal of such disability, if otherwise competent. If in the meantime an administrator with the will annexed has been appointed, his powers and duties cease with the qualification of such executor; but if another executor has qualified and is acting as such they thereby become joint executors.

Carter Code, sec. 779; Charlton Code, sec. 779.

Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 325). Ramp *v.* McDaniels (6 Pac. Rep., 456).

Special administrator.

SEC. 1612. When for any reason there shall be a delay in issuing letters testamentary or of administration, and the property of the deceased is in danger of being lost, injured, or depreciated, the commissioner may appoint a special administrator to take charge of the estate, who shall qualify in like manner and have the powers and perform the duties of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligations against the deceased. Upon the issuing of letters testamentary or of administration the powers of the special administrator cease.

Carter Code, sec. 780; Charlton Code, sec. 780.

Malone *v.* Cornelius (55 Pac. Rep., 536).

Petition to state facts.

SEC. 1613. In an application to prove a will or for the appointment of an executor or administrator the petition shall set forth the facts necessary to give the court jurisdiction, and also state whether the

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deceased left a will or not, and the names, age, and residence, so far as known, of his heirs.

Carter Code, sec. 781; Charlton Code, sec. 781.

Hubbard *v.* Hubbard (7 Or. Rep., 42). Luper *v.* Werts (23 Pac. Rep., 850). Clark *v.* Ellis (9 Or. Rep., 133). Malone *v.* Cornelius (55 Pac. Rep., 536). Jones *v.* Dove (6 Or. Rep., 189). Holmes *v.* O. & C. R. Co. (9 Fed. Rep., 232). Moore *v.* Willamette Trans. Co. (7 Or. Rep., 359).

When will found after administration granted.

SEC. 1614. If, after administration has been granted upon an estate, a will of the deceased be found and proven, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued; and if, after a will has been proven and letters testamentary or of administration with the will annexed have been issued thereon, such will should be set aside, declared void or inoperative, such letters shall be revoked and letters of administration issued.

Carter Code, sec. 782; Charlton Code, sec. 782.

Heir may apply for removal of executor or administrator.

SEC. 1615. Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator who has become of unsound mind or been convicted of any felony or a misdemeanor involving moral turpitude, or who has in any way been unfaithful to or neglectful of his trust, to the probable loss of the applicant. Such application shall be by petition and upon notice to the executor or administrator, and if the court find the charge to be true it shall make an order removing such executor or administrator and revoke his letters.

Carter Code, sec. 783; Charlton Code, sec. 783.

In re Thompkins McIntire Estate (1 Alaska Rep., 73). Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 334, 336). Linge's Adminr. *v.* Alaska Treadwell Co. (3 Alaska Rep. 28). In re Partridge's Estate (51 Pac. Rep., 82). Rutenic *v.* Hamaker (67 Pac. Rep., 200). Adams *v.* Petrane (3 Pac. Rep., 163). In re Holladay's Est. (22 Pac. Rep., 750). In re Mills's Est. (29 Pac. Rep., 453). In re Barnes Est. (59 Pac. Rep., 464). Marks *v.* Coats (62 Pac. Rep., 488). Knight *v.* Hamaker (67 Pac. Rep., 107).

Nonresident executor or administrator may be removed.

SEC. 1616. If an executor or an administrator become a nonresident of the district he may be removed and his letters revoked in the manner prescribed in the last section, except that the notice may be given by publication or posting for such time as the court or judge thereof may direct.

Carter Code, sec. 784; Charlton Code, sec. 784.

Sylvester's Adminr. *v.* Wilson's Adminr. (2 Alaska Rep., 334). Linge's Adminr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 28). Moore *v.* Willamette Trans. Co. (7 Or. Rep., 368).

New undertaking when old insufficient.

SEC. 1617. Whenever the amount of an executor's or administrator's undertaking is insufficient, or the sureties therein, or either of them, have become nonresidents of the District, or are likely to or have become insolvent, such executor or administrator shall be required to give a new and sufficient undertaking. The application for such new undertaking may be made by any heir, legatee, devisee, creditor, or other person interested in the estate, and in the manner prescribed in section sixteen hundred and fifteen for the removal of executors and administrators.

Carter Code, sec. 785; Charlton Code, sec. 785.

Thompson *v.* Dekum (52 Pac. Rep., 517). Bellinger *v.* Thompson (37 Pac. Rep., 714; 40 Pac. Rep., 229). Levy *v.* Riley (4 Or. Rep., 393).

Effect of new undertaking or failure to give it.

SEC. 1618. Such new undertaking, when given and received, shall discharge the sureties in the former undertaking from any liabilities on account of their principal arising from his acts or omissions subsequent thereto. When a new undertaking is ordered, if the executor

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or administrator fail to comply therewith within five days from the entry thereof, or such further time as the order may prescribe, thenceforward the authority of such executor or administrator shall cease, and he shall be deemed removed and his letters revoked.

Carter Code, sec. 786; Charlton Code, sec. 786.

NOTE.—See cases cited under sec. 1617.

Effect of vacancy.

SEC. 1619. Whenever an executor or administrator shall die, resign, or be removed, if there be a coexecutor or coadministrator, he shall thenceforward exercise the powers and perform the duties of the trust; and if all the executors or administrators shall die, resign, or be removed, administration of the estate remaining unadministered shall be granted to those next entitled, if they be competent and qualified.

Carter Code, sec. 787; Charlton Code, sec. 787.

Knight *v.* Hamaker (54 Pac. Rep., 277, 659). Herren's Estate (66 Pac. Rep., 688). Gatch *v.* Simpson (66 Pac. Rep., 688).

New administrator may maintain action against former one.

SEC. 1620. The surviving or remaining executor or administrator, or the new administrator, as the case may be, is entitled to the exclusive administration of the estate, and for that purpose may maintain any necessary and proper action or proceeding on account thereof against the executor or administrator ceasing to act, or against his sureties or representatives.

Carter Code, sec. 788; Charlton Code, sec. 788.

Rutenic *v.* Hamaker (67 Pac. Rep., 196). Adams *v.* Petrane (3 Pac. Rep., 163). Cross *v.* Baskett (21 Pac. Rep., 47). Steel *v.* Holladay (25 Pac. Rep., 69). Herren's Estate (66 Pac. Rep., 688).

Power of the court over an administrator.

SEC. 1621. Whenever it appears probable to the commissioner that any of the causes for removal of an executor or administrator exist or have transpired, as specified in section sixteen hundred and fifteen, it shall be the duty of such commissioner to cite such executor or administrator to appear and show cause why he should not be removed, and if he fail to appear or show sufficient cause an order shall be made removing him and revoking his letters; and it is the duty of the commissioner to exercise a supervisory control over the executor or administrator, to the end that he faithfully and diligently perform the duties of his trust according to law.

Carter Code, sec. 789; Charlton Code, sec. 789.

Ramp *v.* McDaniel (6 Pac. Rep., 456). In re Partridge's Estate (51 Pac. Rep., 82). In re Barnes' Estate (59 Pac. Rep., 464). Bellinger *v.* Thompson (37 Pac. Rep., 714). In re Holladay's Estate (22 Pac. Rep., 750). In re Bolander's Estate (63 Pac. Rep., 689). Gardner *v.* Gillihan (27 Pac. Rep., 220). Knight *v.* Hamaker (54 Pac. Rep., 659; 67 Pac. Rep., 107).

When deceased a member of a copartnership.

SEC. 1622. The executor or administrator of a deceased person who was a member of a copartnership shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof and also the value of such person's individual interest in the partnership property after the payment or satisfaction of all the debts and liabilities of the partnership.

Carter Code, sec. 790; Charlton Code, sec. 790.

In re Estate M. O. Gladdough (1 Alaska Rep., 649). Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 678). Poppleton *v.* Jones (69 Pac. Rep., 919).

Partnership property may be administered by surviving partner.

SEC. 1623. After the inventory is taken the partnership property shall be in the custody and control of the executor or administrator for the purpose of administration, unless the surviving partner shall, within five days from the filing of the inventory, or such further time

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as the commissioner may allow, apply for the administration thereof and give the undertaking therefor hereinafter prescribed.

Carter Code, sec. 791; Charlton Code, sec. 791.

Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 678). | Poppleton *v.* Jones 69 Pac. Rep., 919).

His power and duties in such cases.

SEC. 1624. If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the commissioner may allow. In the exercise of his powers and the performance of his duties the administrator of the partnership is subject to the same limitations and liabilities and control and jurisdiction of the court as a general administrator.

Carter Code, sec. 792; Charlton Code, sec. 792.

Esterly *v.* Rua (122 Fed. Rep., 609, 58 C. C. A., 548; 2 Alaska Rep., 678). Decker *v.* Decker (3 Alaska Rep., 122, 125). Burnside *v.* Savier (6 Or. Rep., | 154). Palicio *v.* Bigne (13 Pac. Rep., 765). Poppleton *v.* Jones (69 Pac. Rep., 919).

Undertaking of administrator of the partnership.

SEC. 1625. The undertaking of the administrator of the partnership shall be in a sum not less than double the value of the partnership property and shall be given in the same manner and be to the same effect as the undertaking of a general administrator.

Carter Code, sec. 793; Charlton Code, sec. 793.

Sylvester's Admnr. *v.* Wilson's Admnr. (2 Alaska Rep., 339). Esterly *v.* Rua (122 Fed. Rep., 609); 58 C. C. A., 548; 2 Alaska Rep., 678).

When administration of partnership property devolves upon the general administrator.

SEC. 1626. In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator; but, before entering upon the duties of such administration, he shall give an additional undertaking in double the value of the partnership property.

Carter Code, sec. 794; Charlton Code, sec. 794.

Palicio *v.* Bigne (13 Pac. Rep., 765). Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 678).

Duty of surviving partner toward administrator.

SEC. 1627. Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him on demand all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

Carter Code, sec. 795; Charlton Code, sec. 795.

How last section may be enforced.

SEC. 1628. Any surviving partner who shall refuse or neglect to comply with the requirements of the last section may be cited to appear before the commissioner, and unless he show cause to the

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contrary the commissioner shall require him to comply with such section in the particular complained of.

Carter Code, sec. 796; Charlton Code, sec. 796.

Who not qualified to act as executor or administrator.

SEC. 1629. The following persons are not qualified to act as executors or administrators: Nonresidents of the District, minors, judicial officers, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude.

Carter Code, sec. 797; Charlton Code, sec. 797.

Holladay *v.* Holladay (19 Pac. Rep., 81).

Form of letters testamentary.

SEC. 1630. Letters testamentary may be in the following form:

DISTRICT OF ALASKA, } ss.
——— Precinct. }

To all persons to whom these presents shall come, greeting:

Know ye, that the will of ——— ———, deceased, a copy of which is hereto annexed, has been duly proven before the commissioner for the precinct aforesaid, and that ——— ———, who is named executor therein, has been duly appointed such executor by the commissioner aforesaid. This, therefore, authorizes the said ——— ——— to administer the estate of the said ——— ———, deceased, according to law.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court said ——— day of ———, anno Domini 19—.

A B, Commissioner.

Carter Code, sec. 798; Charlton Code, sec. 798.

Form of letters of administration.

SEC. 1631. Letters of administration may be in the following form:

DISTRICT OF ALASKA, } ss.
——— Precinct. }

To all persons to whom these presents shall come, greeting:

Know ye, that it appearing to the commissioner aforesaid that ——— ——— has died intestate, leaving at the time of his death property in this District, such commissioner has duly appointed ——— ——— administrator of the estate of such ——— ———, deceased. This, therefore, authorizes the said ——— ——— to administer the estate of said ——— ——— according to law.

In testimony whereof, et cetera;

(the same as in letters testamentary. Letters to an administrator of the partnership with the will annexed, or to a special administrator, may be issued according to the foregoing forms, with such variations as may be proper in the particular case).

Carter Code, sec. 799; Charlton Code, sec. 799.

Resignation of executor or administrator.

SEC. 1632. The commissioner, in his discretion, may allow an executor or administrator to resign when it appears that such executor or administrator is not in default in any matter connected with the duties of his trust. Such executor or administrator shall pay the cost of the proceeding, and, if the application is allowed, he shall surrender his letters to be canceled, and his powers as such shall cease from that time forward.

Carter Code, sec. 800; Charlton Code, sec. 800.

Ramp *v.* *McDaniel* (6 Pac. Rep., 456).

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# CHAPTER EIGHTY-TWO.

## OF THE INVENTORY OF THE ESTATE.

Sec.
1633. When and how made and verified.
1634. What to contain.
1635. Appraisement and appointment of appraisers.
1636. Oath of appraisers.
1637. Appraisement of money and debts.
1638. Debt due by person named in will as executor.
1639. Discharge or bequest of a claim by will.
1640. Property discovered after filing inventory.
1641. Who entitled to possession and control of property.
1642. When person charged with secreting property or writings.
1643. Mode of examination of such persons.
1644. Proceeding in case such person refuses to appear.
1645. Proceeding to compel account.
1646. Damages for conversion before administration.

June 6, 1900.
31 Stat. L., 459–461.

When and how made and verified.

SEC. 1633. An executor or administrator shall within one month from the date of his appointment, or such further time as the commissioner may allow, make and file with the commissioner an inventory, verified by his oath, of all the real and personal property of the deceased which shall come to his possession or knowledge.

Carter Code, sec. 801; Charlton Code, sec. 801.

In re Holladay's Estate (22 Pac. Rep., 750). In re Mills' Estate (29 Pac. Rep., 453). Marks *v.* Coats (62 Pac. Rep., 488). In re Barnes' Estate (59 Pac. Rep., 464). In re Bolander's Estate (63 Pac. Rep., 689). Conser's Estate (66 Pac. Rep., 607). Wells *v.* Applegate (10 Or. Rep., 520).

What to contain.

SEC. 1634. The inventory shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator; also a statement of all debts due the deceased, the written evidence thereof, and the security therefor, if any exist, specifying the name of each debtor, the date of each written evidence of debt, the security therefor, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

Carter Code, sec. 802; Charlton Code, sec. 802.

Appraisement and appointment of appraisers.

SEC. 1635. Before the inventory is filed the property therein specified shall be appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the commissioner; but if any part of the property shall be in a precinct other than that wherein administration is granted, the appraisers thereof may be appointed by such commissioner or the commissioner of the precinct wherein the property shall be; in the latter case a certified copy of the order of appointment shall be filed with the inventory.

Carter Code, sec. 803; Charlton Code, sec. 803.

Oath of appraisers.

SEC. 1636. Before making the appraisement the appraisers shall each make and subscribe an affidavit, to be filed with the inventory, to the effect that he will honestly and impartially appraise the property which shall be exhibited to him according to the best of his knowledge and ability.

Carter Code, sec. 804; Charlton Code, sec. 804.

Appraisement of money and debts.

SEC. 1637. The appraisers shall appraise each article of property separately and set down the value thereof in dollars and cents opposite the entry of the article in the inventory. Money, of whatever nature, that is a legal tender is to be appraised at its nominal value; but debts of all descriptions or kinds are to be appraised at that sum which, in the judgment of the appraisers, may be realized from them

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by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

Carter Code sec. 805; Charlton Code, sec. 805.

Debt due by person named in will as executor.

SEC. 1638. The naming anyone executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory; and if the person so named afterwards takes upon himself the administration of the estate he shall be liable for such sum as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

Carter Code, sec. 806; Charlton Code, sec. 806.

Davison *v.* Akin (70 Pac. Rep., 507). | U. B. Church of Eugene *v.* Akin (77 Pac. Rep., 748).

Discharge or bequest of a claim by will.

SEC. 1639. The discharge or bequest in a will of any claim of the testator against a person named as executor therein, or against any other person, shall, as against the creditors of the deceased, be invalid. Such claim shall be included in the inventory, and for all purposes of administration is to be deemed and treated as a specific legacy of that amount.

Carter Code, sec. 807; Charlton Code, sec. 807.

Property discovered after filing inventory.

SEC. 1640. If, after the filing of the inventory, property not mentioned therein shall come to the knowledge or possession of the executor or administrator, it is his duty immediately to make an inventory thereof and cause the same to be appraised in the manner prescribed in this title and file the same with the commissioner.

Carter Code, sec. 808; Charlton Code, sec. 808.

In re McCarty's Estate (3 Alaska Rep., 253).

Who entitled to possession and control of property.

SEC. 1641. The executor or administrator is entitled to the possession and control of the property of the deceased, both real and personal, and to receive the rents and profits thereof until the administration is completed, or the same is surrendered to the heirs or devisees by order of the court or judge thereof; but where such property, or any portion thereof, is in the possession of a third person, by virtue of a valid subsisting lease or bailment, the possession and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, it is his duty to keep the same in repair and preserve it from loss or decay as far as possible.

Carter Code, sec. 809; Charlton code, sec. 809.

In re McCarty's Estate (3 Alaska Rep., 250–252). Leonard *v.* Grant (8 Or. Rep., 276). Rowland *v.* Williams (32 Pac. Rep., 402). Clark *v.* Bundy (44 Pac. Rep., 282). Casto *v.* Murray (81 Pac. Rep., 883). Hanner *v.* Silver (2 Or. Rep., 339). Butler *v.* Smith (25 Pac. Rep., 381). Humphries *v.* Taylor (5 Or. Rep., 261). Ladd *v.* Mills (75 Pac. Rep., 141). DeBow *v.* Wollenburg (97 Pac. Rep., 717).

NOTE.—As to power of court to surrender property to heirs, etc., see secs. 1714, 1715, chap. 87, post.

When person charged with secreting property or writings.

SEC. 1642. Whenever it appears probable from the affidavit of an executor or administrator, or of an heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate, or any writing relating or pertaining thereto, or that such person has knowledge of any such property or writing being so concealed, secreted, or disposed of, and refuses to disclose the same to the executor or administrator, the commissioner, upon the application of such executor or administrator,

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may cite such person to appear and answer under oath concerning the matter charged.

Carter Code, sec. 810; Charlton Code, sec. 810.

Gardner *v.* Gillihan (27 Pac. Rep., 220). Dray *v.* Bloch (45 Pac. Rep., 772). In re Bolander's Estate (63 Pac. Rep., 689).

Mode of examination of such persons.

SEC. 1643. Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the persons cited shall be reduced to writing and subscribed by him and filed. If such person be not in the precinct where administration is granted, the proceeding may be either before the commissioner of such precinct or before the commissioner of the precinct where such person resides or may be found. In the latter case a certified copy of the written interrogatories, if any, and the examination or other proceeding thereon, or connected therewith, shall be filed with the commissioner where administration is granted.

Carter Code, sec. 811; Charlton Code, sec. 811.

Proceeding in case such person refuses to appear.

SEC. 1644. If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt or may at once be committed, by the warrant of the commissioner, to jail, there to remain in close custody until he submits to the order of the commissioner.

Carter Code, sec. 812; Charlton Code, sec. 812.

Proceeding to compel account.

SEC. 1645. The commissioner, upon the application of the executor or administrator, may cite any person who has been intrusted with any of the property of the deceased to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in a manner prescribed in sections sixteen hundred and forty-two, sixteen hundred and forty-three, and sixteen hundred and forty-four, concerning property or writings alleged to be concealed, and with like effect.

Carter Code, sec. 813; Charlton Code, sec. 813.

Damages for conversion before administration.

SEC. 1646. If any person shall, before administration is granted, embezzle, alien, or in any way convert to his own use any of the property of a deceased person, he shall be liable to the executor or administrator in double the amount of damages which may be assessed therefor.

Carter Code, sec. 814; Charlton Code, sec. 814.

Springer *v.* Jenkins (84 Pac. Rep., 479).

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# CHAPTER EIGHTY-THREE.

## OF THE SUPPORT OF THE WIDOW AND MINOR CHILDREN.

Sec.
1647. Provision for widow and minor children before administration.
1648. Property to be set apart, and effect of.
1649. Further order for support, when made.
1650. When the whole of estate to be set apart to widow and children.
1651. When estate all deemed assets.

June 6, 1900.
31 Stat. L., 461.

SEC. 1647. Until administration of the estate has been granted and the inventory filed the widow and minor children of the deceased

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Provision for widow and minor children before administration.

are entitled to remain in possession of the homestead, all the wearing apparel of the family, and household furniture of the deceased, and also to have a reasonable provision allowed for their support during such period, to be allowed by the commissioner.

Carter Code, sec. 815; Charlton Code, sec. 815.

Leonard *v.* Grant (8 Or. Rep., 276). | Aiken *v.* Aiken (6 Pac. Rep., 682).

Property to be set apart, and effect of.

SEC. 1648. Upon the filing of the inventory the commissioner shall make an order setting apart for the widow or minor children of the deceased, if any, all the property of the estate by law exempt from execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any; or if there be no widow, it is the property of the minor child or, if more than one, of the minor children, in equal shares, to be used and expended in the nurture and education of such child or children by the guardian thereof as the law directs.

Carter Code, sec. 816; Charlton Code, sec. 816.

McAtee *v.* McAtee (32 Pac. Rep., 297).

Further order for support, when made.

SEC. 1649. If the property so exempt is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for one year after the filing of the inventory, the commissioner may order that the executor or administrator pay to such widow, if any, and if not, then to the guardian of such minor children, an amount sufficient for that purpose.

Carter Code, sec. 817; Charlton Code, sec. 817.

Dekum *v.* Dekum (41 Pac. Rep., 159).

When the whole of estate to be set apart to widow and children.

SEC. 1650. If from the inventory of an intestate's estate, who died leaving a widow or minor children, it appears that the value of the estate does not exceed one hundred and fifty dollars over and above property exempt from execution, upon the filing of the inventory the commissioner shall make a decree providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such widow or minor children in like manner and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property be discovered.

Carter Code, sec. 818; Charlton Code, sec. 818.

When estate all deemed assets.

SEC. 1651. If an intestate leave neither widow nor minor children all the property of the estate is assets in the hands of the administrator, for the payment of funeral expenses, expenses of administration, payment of the debts of the deceased, or distribution according to law.

Carter Code, sec. 819; Charlton Code, sec. 819.

## CHAPTER EIGHTY-FOUR.

### OF CLAIMS AGAINST THE ESTATE.


Sec.
1652. Publication of notice and contents thereof.
1653. Proof of publication; effect of not presenting claim.
1654. Claim, how presented, and verification of.
1655. Claim to be allowed or rejected; if barred, not to be allowed.
1656. Effect of judgment against executor or administrator.
1657. Judgment against deceased in his lifetime.
1658. When and how claim may be referred.
1659. Proceeding by referee, and effect of.
1660. Claim of executor or administrator.
1661. How such claim may be determined.


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Publication of notice and contents thereof.

SEC. 1652. Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in the precinct, if there be one, or otherwise in such paper as may be designated by the commissioner, as often as once a week for four successive weeks, and oftener if the commissioner shall so direct. In case of publication in a paper published without the precinct, the executor or administrator shall also post a notice in at least three public places, to be designated by the commissioner in his order, one of which shall be at or immediately adjacent to the post office nearest the residence of the decedent at the time of his death. Such notice shall require all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of such notice, to the executor or the administrator, at a place within the precinct therein specified.

Carter Code, sec. 820; Charlton Code, sec. 820.

Willis *v.* Marks (45 Pac. Rep., 293). | 464). In re Conser's Estate (66 Pac.
In re Barnes' Estate (59 Pac. Rep., | Rep., 607).

Proof of publication; effect of not presenting claim.

SEC. 1653. Before the expiration of the six months mentioned in the last section, a copy of the notice as published, with the proper proof of publication, shall be filed with the commissioner. A claim not presented within six months after the first publication of the notice is not barred, but it can not be paid until the claims presented within that period have been satisfied, and if the claim be not then due, or if it be contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable.

Carter Code, sec. 821; Charlton Code, sec. 821.

In re Conant's Estate (73 Pac. Rep., 1018). | In re Murray's Estate (107 Pac. Rep., 19).

Claim, how presented, and verification of.

SEC. 1654. Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant or some one on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim, the same may be demanded by the executor or administrator, or that its nonproduction be accounted for.

Carter Code, sec. 822; Charlton Code, sec. 822.

Zachary *v.* Chambers (1 Or. Rep., 321). | Goltra *v.* Penland (69 Pac. Rep., 925).

Claim to be allowed or rejected; if barred, not to be allowed.

SEC. 1655. When the claim is presented to the executor or administrator, as prescribed in the last section, if he shall be satisfied that the claim thus presented is just, he shall indorse upon it the words "Examined and approved," with the date thereof, and sign the same officially, and shall pay such claim in due course of administration; but if he shall not be so satisfied he shall indorse thereon the words "Examined and rejected," with the date thereof, and sign the same officially. Every executor or administrator shall keep a list of all demands legally exhibited against the estate of the testator or intestate, and shall every three months file with the commissioner a statement of all such claims as have been presented, and whether the same have been allowed or rejected by him. If any executor or administrator shall refuse to allow any claim or demand against the deceased after the same may have been exhibited to him in accordance with the provisions of this act, the claimant may present his claim to the commissioner having jurisdiction or to the district court



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or the judge thereof for allowance, giving the executor or administrator thirty days' notice of such application to the court. The district court or the judge thereof shall have power to hear and determine in a summary manner all demands against any estate agreeably to the provisions of this chapter, and which have been so rejected by the executor or administrator, and shall cause a concise entry of the order of allowance or rejection to be made on the record, which order shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases: *Provided*, No claim which shall have been rejected by the executor or administrator, as aforesaid, shall be allowed by any court, judge, referee, or jury, except upon some competent or satisfactory evidence other than the testimony of the claimant. No claim shall be allowed by the executor or administrator or the district court or judge which is barred by the statute of limitations.

Carter Code, sec. 823; Charlton Code, sec. 823.

Corbus *v.* Leonard (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 744). In re Estate N. O. Gladdough (1 Alaska Rep., 650, 653).

Easterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 679). "In this case it is held that above section, providing that on the disallowance of a claim against a decedent's estate by the administrator, it may be presented to the district court, or a judge thereof, which shall hear and determine the same in a summary manner, and that its determination shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases, provided that no claim which shall have been so rejected by the administrator shall be allowed by any court, referee, or jury, except on competent and satisfactory proof, does not entitle either party to a jury trial of a proceeding in a district court to establish a claim after it has been ejected by the administrator."

Zachary *v.* Chambers (1 Or. Rep., 321). Knott *v.* Shaw (5 Or. Rep., 482). Grange Union *v.* Burkhardt (8 Or. Rep., 51). White *v.* Ladd (56 Pac. Rep., 515). Verdier *v.* Bigne (19 Pac. Rep., 64). Teel *v.* Winston (29 Pac. Rep., 142). Dunham *v.* Siglin (64 Pac. Rep., 661). Ray *v.* Hodge (13 Pac. Rep., 599). In re Chambers Estate (62 Pac. Rep., 1013). Johnston *v.* Shofner (31 Pac. Rep., 254). Wilkis *v.* Cornelius (28 Pac. Rep., 135). Harding *v.* Grim (36 Pac. Rep., 634). Quinn *v.* Gross (33 Pac. Rep., 535). Willis *v.* Marks (45 Pac. Rep., 293). Aiken *v.* Coolidge (6 Pac. Rep., 712). Re Estate of Houck (17 Pac. Rep., 461). Waite *v.* Grubb (73 Pac. Rep., 206). Goltra *v.* Penland (77 Pac. Rep., 129). In re Morgan's Estate (77 Pac. Rep., 608; 78 Pac. Rep., 1029). Bull *v.* Payne (84 Pac. Rep., 697).

Effect of judgment against executor or administrator.

SEC. 1656. The effect of a judgment against an executor or administrator, on account of a claim against the estate of his testator or intestate, is only to establish the claim as if it had been allowed by him, so as to require it to be satisfied in due course of administration, unless it appear that the complaint alleged assets in his hands applicable to the satisfaction of such claim, and that such allegation was admitted or found to be true, in which case the judgment may be enforced against such executor or administrator personally.

Carter Code, sec. 824; Charlton Code, sec. 824.

In re Estate of Gladdough (1 Alaska Rep., 656).

Brenner *v.* Alexander (19 Pac. Rep., 9).

Judgment against deceased in his lifetime.

SEC. 1657. A claim established by judgment against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment docket thereof to the executor or administrator for allowance or rejection, as in other cases; but this section is not to be construed to prevent an execution from being issued upon such judgment, as elsewhere provided in this code.

Carter Code, sec. 825; Charlton Code, sec. 825.

Bower *v.* Holladay (22 Pac. Rep., 553).

Knott *v.* Shaw (5 Or. Rep., 484).

When and how claim may be referred.

SEC. 1658. If the executor or administrator doubt the validity of any claim presented to him, he may agree, in writing, with the claim-

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ant that an order of reference be made by the commissioner thereof concerning the same. Upon the filing of such agreement, the commissioner shall make the order accordingly.

Carter Code, sec. 826; Charlton Code, sec. 826.

Proceeding by referee, and effect of.

SEC. 1659. The referee shall proceed to hear and examine the matter, and report thereon to the commissioner, where the order of reference was made, in the same manner and with like effect as if the order was made in an action upon such claim.

Carter Code, sec. 827; Charlton Code, sec. 827.

Claim of executor or administrator.

SEC. 1660. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly verified, may be presented to the commissioner for allowance or rejection; but the allowance of such claim by such commissioner does not conclude a creditor, heir, or other person interested in the estate in any action or proceeding between such executor or administrator and such creditor, heir, or other person.

Carter Code, sec. 828; Charlton Code, sec. 828.

How such claim may be determined.

SEC. 1661. If the commissioner reject the claim of the executor or administrator, either in whole or in part, or in case the same is not presented for allowance, as provided in the last section, the executor or administrator may retain the amount thereof until the final settlement of his accounts, when, if the same is controverted or objected to by any person interested in the estate, the right of the executor or administrator to have the allowance claimed shall be tried and determined by the court. If the claim is not presented to the commissioner, as provided in the section last preceding, before it is barred by the statute of limitations, such claim can not be allowed, retained, or recovered.

Carter Code, sec. 829; Charlton Code, sec. 829.

Farrow *v.* Nevin (75 Pac. Rep. 711).

## CHAPTER EIGHTY-FIVE.

### OF THE SALE OF PROPERTY BY EXECUTORS OR ADMINISTRATORS.


Sec.
1662. Sale of property, how made, and application therefor.
1663. Order of sale of personal property.
1664. Sales of property thereunder.
1665. May be sold at private sale.
1666. When real property may be sold where specially devised.
1667. Petition for order of sale of real property.
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1669. Service of citation.
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1671. Sale, how made; security for purchase money.
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1675. When real property may be sold to pay legacy, etc.
1676. Sale of property under will.
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1688. Fraudulent or void conveyance of judgments of the deceased.
1689. Order allowing proceedings to vacate.
1690. Disposition of property recovered on such proceeding.


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Sale of property, how made, and application therefor.

SEC. 1662. No sale of the property of an estate is valid unless made by order of the commissioner, as in this chapter prescribed, unless herein otherwise provided. The application for an order of sale shall be by the petition of the executor or administrator and in case of real property a citation to the heirs and others interested in such property.

Carter Code, sec. 830; Charlton Code, sec. 830.

Wright *v.* Edwards (10 Or. Rep., 301). Gilmore *v.* Taylor (5 Or. Rep., 89). Verdier *v.* Bigne (19 Pac. Rep., 64). Bower *v.* Holladay (22 Pac. Rep., 553). Mitchell *v.* Campbell (24 Pac. Rep., 455). Welder *v.* Osborn (25 Pac. Rep., 715). Brown *v.* Brown (7 Or. Rep., 285). Northrop *v.* Marquam (18 Pac. Rep., 449). Russell *v.* Lewis (3 Or. Rep., 380). Weill *v.* Clark (9 Or. Rep., 387). Fisk *v.* Kellogg (3 Or. Rep., 503). Levy *v.* Riley (4 Or. Rep., 392). In re Estate Houck (17 Pac. Rep., 461). Worley *v.* Taylor (28 Pac. Rep., 903). Spragg *v.* Stump (8 Fed. Rep., 207). Haun *v.* Martin (86 Pac. Rep., 371). Olston *v.* Or. W. P. & R. Co. (96 Pac. Rep., 1095). Smith *v.* Whiting (106 Pac. Rep., 791).

Order of sale of personal property.

SEC. 1663. Upon the filing of the inventory the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution; and it shall be the duty of the commissioner to grant such order if, in his judgment, it is for the best interest of the estate, and to direct and prescribe the terms of sale upon which such property shall be sold, whether for cash or on credit.

Carter Code, sec. 831; Charlton Code, sec. 831.

Worley *v.* Taylor (28 Pac. Rep., 903). | In re Estate Houck (17 Pac. Rep., 461).

Sales of property thereunder.

SEC. 1664. Thereafter the executor or administrator shall sell such personal property from time to time for the purposes specified in the last section, and as often and as much thereof as may be necessary. Such sale shall be conducted in the same manner as a sale of personal property on execution, unless otherwise provided in this chapter.

Carter Code, sec. 832; Charlton Code, sec. 832.

NOTE.—For manner of sale on execution see secs. 1110, 1111, chap. 31, ante.

May be sold at private sale.

SEC. 1665. If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the commissioner that it would be for the interest of the estate, he may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale. If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any property of the estate not specially devised or bequeathed remains unsold or appropriated to the purposes specified in section seventeen hundred.

Carter Code, sec. 833; Charlton Code, sec. 833.

NOTE.—Reference to sec 1700 is obviously erroneous; it should probably be to sec. 1663. (Carter and Charlton Codes, instead of 868, 831.)

In re Osborn's Estate (58 Pac. Rep., 521). | In re Noon's Estate (88 Pac. Rep., 673; 90 Pac. Rep., 673).

When real property may be sold where specifically devised.

SEC. 1666. When the proceeds of the sale of personal property have been exhausted, and the charges, expenses, and claims specified in section sixteen hundred and sixty-three have not all been satisfied, the executor or administrator shall sell the real property of the estate, or so much thereof as may be necessary for that purpose. If any of such real property have been specially devised, it shall be exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

Carter Code, sec. 834; Charlton Code, sec. 834.

Haun *v.* Martin (86 Pac. Rep., 371). | Smith *v.* Whiting (106 Pac. Rep., 791).

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Petition for order of sale of real property.

SEC. 1667. The petition for the order of sale of real property shall state the amount of the sales of personal property, the charges, expenses, and claims still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known.

Carter Code, sec. 835; Charlton Code, sec. 835..

In re Smith's Estate (75 Pac. Rep., 133). | Smith *v.* Whiting (106 Pac. Rep., 791).

Citation to heirs and devisees to show cause.

SEC. 1668. Upon the filing of the petition a citation shall issue to the devisees and heirs therein mentioned, and to all others unknown, if any such there be, to appear at a time therein mentioned, not less than thirty days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for.

Carter Code, sec. 836; Charlton Code, sec. 836.

Smith *v.* Whiting (106 Pac. Rep. 791).

Service of citation.

SEC. 1669. Upon an heir or devisee known and resident within the district such citation shall be served and returned as a summons, and upon an heir or devisee unknown or nonresident it may be served by publication or posting, or both, not less than four weeks, or for such further time as the commissioner may prescribe. When service is had by posting, the citation shall be posted at not less than three public places within the precinct, one of which shall be the post office nearest to the place where the decedent resided at the time of his death. When service of the citation is made by publication or posting, there shall be given with it a brief description of the property described in the petition.

Carter Code, sec. 837; Charlton Code, sec. 837.

Smith *v.* Whiting (106 Pac. Rep. 791).

Hearing and order of sale.

SEC. 1670. If, upon the hearing, the court find that it is necessary that the real property, or any portion thereof, should be sold, it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both; and if such property can not be divided without probable injury and loss to the estate, it may order that it, or any specific lot or portion thereof, shall be sold wholly, whether otherwise necessary or not.

Carter Code, sec. 838; Charlton Code, sec. 838.

In re Estate of Houck (17 Pac. Rep., 461). In re Smith's Estate (73 Pac. | Rep., 336). Smith *v.* Whiting (106 Pac. Rep., 791).

Sale, how made; security for purchase money.

SEC. 1671. Upon the order being made, the executor or administrator shall sell the property therein specified upon the terms directed and in the manner herein otherwise provided. Such sale shall be made in the same manner as like property is sold on execution: *Provided, however*, The commissioner may, if thought best, order said property to be sold on the premises. When the sale is upon credit the executor or administrator shall take the note of the purchaser for the purchase money, with a mortgage upon the property to secure the payment thereof.

Carter Code, sec. 839; Charlton Code, sec. 839.

Return of sale, and objections thereto.

SEC. 1672. Within ten days after the sale of real property the executor or administrator shall make a return of his proceedings concerning such sale. Upon such return any of the persons cited to appear

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on the application for the order of sale may file his objections to the confirmation of such sale.

Carter Code, sec. 840; Charlton Code, sec. 840.

Levy *v.* *Riley* (4 Or. Rep., 396). | In re Smith Estate (73 Pac. Rep., 336).

When sale confirmed and when vacated.

SEC. 1673. Upon the hearing the court shall confirm the sale and decree that the executor or administrator make a conveyance to the purchaser, unless it appear that there were irregularities in the sale, or that the sum bidden for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the court shall make an order vacating the sale and directing that the property be resold; and upon such second sale the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objections are made to the confirmation of the sale as provided in the section last preceding, the court shall nevertheless examine the proceedings concerning such sale, and, if it appear proper, may make the order of resale provided for in this section in the same manner and with like effect as if objections had been filed thereto.

Carter Code, sec. 841; Charlton Code, sec. 841.

Dray *v.* Block (41 Pac. Rep., 660). | Mitchell *v.* Campbell (24 Pac. Rep., 455).

Recitals in conveyance and effect thereof.

SEC. 1674. A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders, and shall operate to convey all the estate, right, and interest of the testator or intestate in the premises at the time of his death.

Carter Code, sec. 842; Charlton Code, sec. 842.

Whittaker *v.* Belt (36 Pac. Rep., 534).

When real property may be sold to pay legacy, etc.

SEC. 1675. When a testator shall have specially bequeathed any specific article of personal property, or given any legacy by will, and there shall not be sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the deficiency, in the manner hereinbefore provided.

Carter Code, sec. 843; Charlton Code, sec. 843.

Sale of property under will.

SEC. 1676. When the testator shall make provision in his will for the sale or disposition of all or any particular portion of his estate, for the payment of funeral charges, expenses of administration, or of claims against the estate, the property so appropriated may be sold or disposed of as directed by the executor or administrator with the will annexed, without an order of the court therefor; but he shall be bound to conduct the sale and make a return thereof in all respects as if it were made by order of the court, unless there are special directions in the will concerning the manner and terms of sale, in which case he shall be governed by such directions in such respects.

Carter Code, sec. 844; Charlton Code, sec. 844.

Brown *v.* Brown (7 Or. Rep., 285). | Northrop *v.* Marquam (18 Pac. Rep., 449).

Proceeding in case property appropriated insufficient.

SEC. 1677. If the provision made by the will or the property thereby appropriated be insufficient for the purpose intended, the re-

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maining portion of the estate may be sold for that purpose, according to the provisions of this chapter.

Carter Code, sec. 845; Charlton Code, sec. 845.

Bequests and legacies, when liable for debts.

SEC. 1678. The property, real and personal, given by the will to any devisee or legatee is liable for the payment of the funeral charges, expenses of administration, and of claims against the estate; and if there be more than one such devisee or legatee, then in proportion to the value or amount of the several devises and legacies; except that specific devises and legacies shall be exempt from such liability, if such appear to have been the intention of the testator and there be other sufficient property to satisfy such charges, expenses, and claims.

Carter Code, sec. 846; Charlton Code, sec. 846.

Sale of contract for the purchase of real property.

SEC. 1679. If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in such real property by virtue of such contract may be sold in the same manner as if such contract had been executed in the lifetime of the deceased, by a conveyance to him of such property according to the legal effect and terms of such contract.

Carter Code, sec. 847; Charlton Code, sec. 847.

Sale subject to payments to be made on contract.

SEC. 1680. If there be any payments due, or to become due, on such contract, to the vendor of the deceased, sale is made subject thereto, and before the same can be confirmed or the contract assigned to the purchaser, such purchaser shall execute an undertaking, with one or more sufficient sureties, in an amount not less than double the value of all the payments then due or to become due, for the benefit of whom it may concern, to be void upon the condition that such purchaser will make all such payments according to the terms of such contract, and indemnify the executor or administrator or others whom it may concern against all damages, costs, and expenses by reason of any covenant or agreement contained in such contract.

Carter Code, sec. 848; Charlton Code, sec. 848.

Assignment of contract and effect thereof.

SEC. 1681. The order of confirmation of such sale shall direct the executor or administrator to make an assignment of such contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right, and interest of the deceased at the time of his death in such real property, and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

Carter Code, sec. 849; Charlton Code, sec. 849.

Order to redeem mortgaged property.

SEC. 1682. If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemption of the same by will, the commissioner, upon the application of the executor or administrator, or the application of an heir or creditor or other person interested in the estate, may order the executor or administrator to redeem such property out of the proceeds of the other personal property, if it appear that such redemption would be for the interest of the estate, and not prejudicial to creditors.

Carter Code, sec. 850; Charlton Code, sec. 850.

Verdier *v.* Bigne (19 Pac. Rep., 64). | Whitaker *v.* Belt (36 Pac. Rep., 534).

Order for the sale of mortgaged property.

SEC. 1683. If, upon such application, such redemption be deemed not proper or inexpedient, the commissioner shall order such property to be sold in like manner and with like effect as is provided in other cases of the sale of real property by this chapter; and the conveyance to the purchaser shall operate to convey to him all the

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estate, right, and interest which the deceased would have had in the property had not the same been mortgaged by him.

Carter Code, sec. 851; Charlton Code, sec. 851.

Application of proceeds of sale.

SEC. 1684. Ten days before making an order for the application of the proceeds of such sale, the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt, and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator; and thereupon the court shall order that the proceeds of the sale be first applied to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

Carter Code, sec. 852; Charlton Code, sec. 852.

Sheppard *v.* Saltzman (54 Pac. Rep., 882).

When mortgage foreclosed or suit commenced for that purpose.

SEC. 1685. The three sections last preceding shall not be construed to include a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

Carter Code, sec. 853; Charlton Code, sec. 853.

When debt not due, how satisfied.

SEC. 1686. If the debt secured by the mortgage mentioned in section one thousand six hundred and eighty-two be not due at the time of the making of the order for redemption or application of the proceeds of sale, the party to whom it is payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

Carter Code, sec. 854; Charlton Code, sec. 854.

Effect of order confirming sale.

SEC. 1687. The order of confirmation of sale in this chapter mentioned is conclusive as to the regularity of the sale and no further. All purchases of the property of the estate by an executor or administrator, however made, whether directly or indirectly, are prohibited, and if made are void.

Carter Code, sec. 855; Charlton Code, sec. 855.

Fraudulent or void conveyance of judgments of the deceased.

SEC. 1688. Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration, and the claims against the estate, and the deceased shall in his lifetime have made or suffered any conveyance, transfer, or sale of any property, real or personal, or any right or interest therein, with intent to delay, hinder, or defraud creditors, or when such conveyance, transfer, or sale has been so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime has suffered, consented, or procured any judgment or decree to be given against him with such intent or in such manner as to be likewise void, it is the duty of such executor or administrator to make application by petition to the commissioner for leave to commence and prosecute to final judgment or decree the necessary and proper actions or proceedings to have such conveyance, transfer, sale, or judgment declared void, and the property affected thereby discharged from the effect thereof.

Carter Code, sec. 856; Charlton Code, sec. 856.

King *v.* Boyd (4 Or. Rep., 332).
Humphries *v.* Taylor (5 Or. Rep., 263).
Marks *v.* Coats (62 Pac. Rep., 488).
Scroggin *v.* Schloath (15 Pac. Rep., 635).

Order allowing proceedings to vacate.

SEC. 1689. If upon the application it appear to such commissioner that the assets are insufficient for the purposes specified in the last section, and that it is probable that the conveyance, transfer, or judg-

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ment was made, suffered, consented to, or procured with the intent or in the manner specified in the last section, he shall make the order directing the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

Carter Code, sec. 857; Charlton Code, sec. 857.

Disposition of property recovered on such proceedings.

SEC. 1690. The property recovered by means of any proceeding in pursuance of the last two sections is to be sold and appropriated to supply the deficiency mentioned in section one thousand six hundred and eighty-eight in the same manner as other like property; but the right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

Carter Code, sec. 858; Charlton Code, sec. 858.

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# CHAPTER EIGHTY-SIX.

## OF THE ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.


Sec.
1691. When filed and what to contain.
1692. Proceeding if administrator neglect to file account.
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June 6, 1900.
31 Stat. L., 468–470.
When filed and what to contain.

SEC. 1691. An executor or administrator shall, within six months from the date of the notice of his appointment, and every six months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file the same with the commissioner, showing the amount of the money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof.

Carter Code, sec. 859; Charlton Code, sec. 859.

Rostel *v.* Morat (23 Pac. Rep., 900). | In re Roach's Estate (92 Pac. Rep., 188).

Proceeding if administrator neglect to file account.

SEC. 1692. An executor or administrator who shall fail to file an account, as required in the last section, may be required by a citation or ordered by a commissioner to appear and do so, either upon the application of an heir or creditor, or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished as for a contempt, or by warrant of the commissioner be committed to close custody in jail until he consents to do so.

Carter Code, sec. 860; Charlton Code, sec. 860.

Rutenic *v.* Hammaker (67 Pac. Rep., 197). In re Morrison's Estate (87 Pac. Rep., 1043).

Order for the payment of expenses, charges, and claims.

SEC. 1693. Within thirty days after the filing of the first semiannual account, and at each semiannual account thereafter, the com-

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missioner shall ascertain and determine if the estate be sufficient to satisfy the claims allowed by the executor or administrator, within the first six months or any succeeding period of six months thereafter, after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so, he shall so order and direct; but if the estate be insufficient for that purpose, he shall ascertain what per centum of such claims it is sufficient to satisfy, and order and direct accordingly.

Carter Code, sec. 861; Charlton Code, sec. 861.

Rostel *v.* Morat (23 Pac. Rep., 900). Willis *v.* Marks (45 Pac. Rep., 293). In re Chambers' Estate (62 Pac. Rep., 1013). In re Noon's Estate (88 Pac. Rep., 673).

Final account, when filed and what to contain.

SEC. 1694. When the estate is fully administered it shall be the duty of the executor or administrator to file his final account. Such account shall be verified and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and the amount of money and property, if any, remaining unexpended or unappropriated. Upon the filing of the final account, the commissioner shall make an order directing notice thereof to be given in the same manner as the notice of an appointment of an executor or administrator, and appoint a day not less than sixty days subsequent thereafter for the hearing of objections to such final account and the settlement thereof.

Carter Code, sec. 862; Charlton Code, sec. 862.

In re Partridge's Estate (51 Pac. Rep., 82). Dray *v.* Bloch (45 Pac. Rep., 772). In re Chambers' Estate (62 Pac. Rep., 1013). In re Conant's Estate (73 Pac. Rep., 1018). Steel *v.* Holladay (25 Pac. Rep., 69). Cross *v.* Baskett (21 Pac. Rep., 47). In re Osborn's Estate (58 Pac. Rep., 521). In re Conant's Estate (92 Pac. Rep., 118).

Objections to final account, by whom and when made.

SEC. 1695. An heir, creditor, or other person interested in the estate may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objections; but no creditor shall be allowed to object to such account whose claim has been satisfied, as allowed by the executor or administrator or established by judgment.

Carter Code, sec. 863; Charlton Code, sec. 863.

In re Ollschlager's Estate (89 Pac. Rep., 1049). In re Conant's Estate (92 Pac. Rep., 118).

Decree upon final account and effect thereof.

SEC. 1696. Upon the hearing the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right; and such decree in any other action or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled.

Carter Code, sec. 864; Charlton Code, sec. 864.

In re Plunkett's Estate (54 Pac. Rep., 152.) Cross *v.* Baskett (21 Pac. Rep., 47). In re Conant's Estate (73 Pac. Rep., 1018). Froebrich *v.* Lane (76 Pac. Rep., 351).

Administrator chargeable with amount of inventory.

SEC. 1697. An executor or administrator is chargeable in his account with all the property of the estate which may come into his possession at the value of the appraisement contained in the inventory, except as in this chapter otherwise provided.

Carter Code, sec. 865; Charlton Code, sec. 865.

In re Osborn's Estate (58 Pac. Rep., 521). In re Consor's Estate (66 Pac. Rep., 608). Davison *v.* Akin (70 Pac. Rep., 507).

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For what administrator responsible.

SEC. 1698. He shall not make profit by the increase in value of the property of the estate or suffer loss for the decrease in value or the destruction thereof without his fault; and if any of the property of the estate sell for more than its appraised value he shall account for the excess, and if any such property sell for less than its appraised value he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate if it appear that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satisfies any such claim for less than its nominal value he is only entitled to charge in his account the sum actually paid.

Carter Code, sec. 866; Charlton Code, sec. 866.

Davison *v.* Akin (70 Pac. Rep., 507).

Expenses and compensation of administrator.

SEC. 1699. An executor or administrator shall be allowed, in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel. For his services he shall receive such compensation as the law provides; but when the deceased, by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services unless he shall within ten days after his appointment subscribe and file with the commissioner a written declaration renouncing the compensation provided by the will.

Carter Code, sec. 867; Charlton Code, sec. 867.

In re Pickett's Will (89 Pac. Rep., 377). Steel *v.* Holladay (25 Pac. Rep., 69). In re McCullough's Estate (49 Pac. Rep., 886). In re Osborn's Estate (58 Pac. Rep., 521). Sheppard *v.* Slatzman (54 Pac. Rep., 882). Knight *v.* Hamaker (67 Pac. Rep., 107). Waite *v.* Willis (70 Pac. Rep., 1034).

Same subject.

SEC. 1700. Notwithstanding the provision in the will for the compensation of an executor, if the estate be insufficient to satisfy the claims against it, the commissioner shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to what the executor would have been entitled to if no such provision had been made.

Carter Code, sec. 868; Charlton Code, sec. 868.

Amount of compensation.

SEC. 1701. The compensation provided by law for an executor or an administrator is a commission upon the whole estate accounted for by him, as follows:

First. For the first thousand dollars, or any less sum, at the rate of seven per centum thereof;

Second. For all above that sum and not exceeding two thousand dollars, at the rate of five per centum thereof;

Third. For all above two thousand and not exceeding four thousand dollars, at the rate of four per centum thereof;

Fourth. For all above the last-mentioned sum, at the rate of two per centum thereof.

In all cases, such further compensation as is just and reasonable may be allowed by the commissioner for any extraordinary and unusual services not ordinarily required of an executor or administrator in the discharge of his trust.

Carter Code, sec. 869; Charlton Code, sec. 869.

In re McCarty's Estate (3 Alaska Rep., 250). In re McCullough's Estate (49 Pac. Rep., 886). In re Partridge's Estate (51 Pac. Rep., 82). Steel *v.* Holladay (25 Pac. Rep., 69). In re Osborn's Estate (58 Pac. Rep., 521). First Nat. Bank *v.* Oregon Paper Co. (71 Pac. Rep., 144).

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Proceeding in case of neglect to file final account.

SEC. 1702. Before the time appointed for the hearing and settlement of a final account the executor or administrator shall file with the commissioner a copy of the notice thereof, with the proper proof of its publication or posting as directed. An executor or administrator who shall fail to file his final account as provided in section sixteen hundred and ninety-four may be proceeded against in like manner and with like effect as provided in section sixteen hundred and ninety-two in case of failure to file a semiannual account.

Carter Code, sec. 870; Charlton Code, sec. 870.

Dray *v.* Bloch (45 Pac. Rep., 772). | In re Morrison's Estate (87 Pac. Rep., 1043).

Administrator may compound for debt due estate.

SEC. 1703. Whenever a debtor of a deceased person is unable to pay all his debts, an executor or administrator, by an order of the commissioner, may compound with him and give him a discharge upon receiving a fair and just proportion of his effects; but if such compounding is procured or produced by the fraudulent representations or conduct of such debtor, such payment shall only operate to discharge a like amount of the debt.

Carter Code, sec. 871; Charlton Code, sec. 871.

Olston *v.* Oreg. W. P. & R. Co. (96 Pac. Rep., 1095).

## CHAPTER EIGHTY-SEVEN.

### OF THE PAYMENT OF CLAIMS AND CHARGES.


Sec.
1704. Order of payment of charges and claims.
1705. Proceeds of real property to be applied in satisfaction of lien.
1706. How judgment or decree satisfied when given in lifetime of deceased.
1707. If estate insufficient, payment to be in proportion.
1708. Funeral charges, who may incur and when allowed.
1709. Administrator may retain compensation and expenses.
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1711. Administrator liable to creditor personally, when.
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1714. Application of heir or other person for share of estate.
1715. Notice and proceedings thereon.
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1717. Application for decree to refund.
1718. Proceedings thereon, and how decree enforced.


June 6, 1900.

31 Stat. L., 470–472.

Order of payment of charges and claims.

SEC. 1704. The charges and claims against the estate which have been presented and allowed, or presented and disallowed but subsequently established by judgment within the first six months, after the date of the notice of appointment of the executor or adminstrator, shall be paid in the following order, and those presented and allowed or established in like manner with each succeeding period of six months thereafter during the continuance of the administration in the same manner: First, funeral charges; second, taxes of whatever nature due the United States; third, expenses of last sickness; fourth, all other taxes of whatever nature; fifth, debts preferred by the laws of the United States; sixth, debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens; seventh, debts due employee of decedent for wages earned within the ninety days immediately preceding the death of the decedent; eighth, all other claims against the estate.

Carter Code, sec. 872; Charlton Code, sec. 872.

Bower *v.* Holladay (22 Pac. Rep., 553).

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Proceeds of real property to be applied in satisfaction of lien.

SEC. 1705. The preference given by subdivision sixth of the last section shall extend only to the proceeds of the property upon which the lien exists and as to such proceeds such debt is to be preferred to any of the classes mentioned in such section other than the taxes upon such property.

Carter Code, sec. 873; Charlton Code, sec. 873.

How judgment or decree satisfied when given in lifetime of deceased.

SEC. 1706. If such debt has been established by judgment against the deceased in his lifetime, such judgment, if the proceeds of the personal property be not sufficient to satisfy it, may, in the discretion of the commissioner, be either satisfied from the proceeds of the sale of the property by the executor or administrator upon which it is a lien, or enforced by execution against such property. Such sale by the executor or administrator discharges the property from the lien of the judgment, but the same attaches to the proceeds thereof, after deducting therefrom the expenses of sale.

Carter Code, sec. 874; Charlton Code, sec. 874.

Bower *v.* Holladay (22 Pac. Rep., 553).

Knott *v.* Shaw (5 Or. Rep., 484).

If estate insufficient, payment to be in proportion.

SEC. 1707. Except as specially provided in the last three sections, if the estate be insufficient to pay all the claims and charges of any one class, payable within any period of six months during the administration, as provided in section seventeen hundred and four, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

Carter Code, sec. 875; Charlton Code, sec. 875.

Funeral charges, who may incur and when allowed.

SEC. 1708. The executor named in the will, or if there be none, or if he do not attend to it, then the husband, widow, or next of kin, in the order herein named, are authorized to incur funeral charges on account of the estate in the burial of the deceased before administration of the estate is granted, and the burial of the deceased may be in a manner and at a cost according to his circumstances and condition in life; but no funeral charges, except those necessary to give the deceased a plain and decent burial, shall be allowed out of the estate where the assets are not sufficient to satisfy all other claims against it, including the legacies and devises, if there be any.

Carter Code, sec. 876; Charlton Code, sec. 876.

Administrator may retain compensation and expenses.

SEC. 1709. The executor or administrator may retain in his hands, in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

Carter Code, sec. 877; Charlton Code, sec. 877.

Shepard *v.* Saltzman (54 Pac. Rep., 882).

In re Murray's Estate (107 Pac. Rep., 19).

Debts not due or contingent.

SEC. 1710. A debt due and payable is not entitled to preference over one of the same class not due if the latter be presented within the same period. A debt not due, whether contingent or absolute, upon being presented shall, if absolute, be satisfied by the payment of such sum as the commissioner may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum, to be ascertained in like manner, equal to its present value.

Carter Code, sec. 878; Charlton Code, sec. 878.

When administrator liable to creditor personally.

SEC. 1711. When, upon the filing of a semiannual account, an order is made determining and prescribing the amount of assets applicable to the claims then presented, as provided in section sixteen hundred and ninety-three, thereafter the executor or administra-

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tor is personally liable to each creditor included in such order for such amount.

Carter Code, sec. 879; Charlton Code, sec. 879.

Bower *v.* Holladay (22 Pac. Rep., 553).

Distribution and payment of legacies.

SEC. 1712. If all the charges and claims shall have been satisfied upon the first distribution of the assets, or as soon thereafter as they may be, the commissioner shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

Carter Code, sec. 880; Charlton Code, sec. 880.

When real property discharged from administration.

SEC. 1713. The real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator, and to be applied to the satisfaction of claims against the estate, as by this chapter provided; but upon the settlement of the estate and the termination of the administration thereof so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order or decree therefor. But if there be any surplus of the proceeds of sale of such real property, or any part thereof, the commissioner shall order and direct a distribution of such surplus among those who would have been entitled to such land if the same had not been sold.

Carter Code, sec. 881; Charlton Code, sec. 881.

In re John's Will (47 Pac. Rep., 341; 36 L. R. A., 292). Clark *v.* Bundy (44 Pac. Rep., 282). Leonard *v.* Grant (8 Or. Rep., 278). De Bow *v.* Wollenburg (97 Pac. Rep., 717).

Application of heir or other person for share of estate.

SEC. 1714. At any time after the filing of the first semiannual account any heir, devisee, or legatee may apply to the commissioner by petition for an order that he have the possession and rents and profits thereof of the portion of the real property to which he may be entitled, and that payment be made to him of his legacy or distributive share of the personal property of such estate, as the case may be.

Carter Code, sec. 882; Charlton Code, sec. 882.

Notice and proceedings thereon.

SEC. 1715. Notice of the application shall be given to the executor or administrator thirty days before the time at which it is made. If upon the hearing it appear that the estate is but little in debt, the commissioner may, in his discretion, grant the petition or some part thereof upon the condition that such applicant file with the commissioner, within a time in the order specified, an undertaking, with one or more sufficient sureties, for the benefit of whom it may concern, in a sum double the value of such real property, legacy, or distributive share, to be void upon the condition that such heir, legatee, or devisee will pay, when required, his portion toward satisfying any claim against the estate.

Carter Code, sec. 883; Charlton Code, sec. 883.

Qualification of sureties in undertaking, and costs.

SEC. 1716. The sureties in such undertaking shall have the same qualifications as sureties in bail upon arrest, and shall justify before the commissioner in like manner. The costs of the proceeding shall be paid by the applicant.

Carter Code, sec. 884; Charlton Code, sec. 884.

Application for decree to refund.

SEC. 1717. If after the giving of such undertaking it shall become necessary, to satisfy any claim against the estate, to require the payment of all or any part of the sum therein specified, it shall be the duty of the executor or administrator to apply by petition to the

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commissioner for a decree to that effect. Notice of the application shall be given to the party filing the undertaking twenty days before the time at which the application is made.

Carter Code, sec. 885; Charlton Code, sec. 885.

Proceedings thereon, and how decree enforced.

SEC. 1718. If upon the hearing it appear necessary and proper that such payment should be made, the commissioner shall decree accordingly, specifying therein the amount to be paid and within what time; and if the amount be not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking, by execution, in the same manner as a judgment in the district court.

Carter Code, sec. 886; Charlton Code, sec. 886.

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# CHAPTER EIGHTY-EIGHT.

## OF GUARDIANS AND WARDS.


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1720. Commissioner to appoint guardian.
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1749. "Insane person" and "spendthrift" defined.


June 6, 1900.

31 Stat. L., 472–476.

Next of kin to be guardian.

SEC. 1719. Whenever it becomes the duty of a commissioner to appoint a guardian for a minor, the relatives of such minor, whether male or female, upon application to the commissioner, shall in all cases be appointed, the nearest relative having precedence: *Provided*, Said applicant shall be of good moral character and be otherwise competent to discharge the duties of guardian to such ward.

Carter Code, sec. 887; Charlton Code, sec. 887.

Commissioner to appoint guardian.

SEC. 1720. The commissioner for each precinct, when it shall appear to him necessary or convenient, may appoint guardians to minors and others being inhabitants or residents in such precinct, and also such as shall reside without the district and have any estate within the same.

Carter Code, sec. 888; Charlton Code, sec. 888.

Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671).

Who to nominate guardian.

SEC. 1721. If the minor is under the age of fourteen years the commissioner may nominate and appoint his guardian, and if he be above that age he may nominate his own guardian, who, if approved by the commissioner having jurisdiction of the estate, shall be appointed

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accordingly; and if the guardian nominated by such minor shall not be approved by such commissioner, or if the minor shall reside without the district, or if, after having been cited by the commissioner, he shall neglect to nominate a suitable person, the commissioner may nominate and appoint the guardian in the same manner as if the minor were under fourteen years of age.

Carter Code, sec. 889; Charlton Code, sec. 889.

Powers and duties of guardian.

SEC. 1722. Every guardian so appointed shall have the custody and tuition of the minor and the care and management of his estate, and shall continue in office until the minor shall have arrived at the age of twenty-one years, or until the guardian shall have been discharged according to law: *Provided, however*, The father of the minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and to the care of his education.

Carter Code, sec. 890; Charlton Code, sec. 890.

Monastes *v.* Catlin (6 Or. Rep., 119). Trutch *v.* Bunnell (4 Pac. Rep., 588). Conklin *v.* La Dow (54 Pac. Rep., 216). Richardson's Guardianship (64 Pac. Rep., 390). Gerber *v.* Bauerline (19 Pac. Rep., 849). Cutting *v.* Scherzinger (68 Pac. Rep., 393).

NOTE.—As to appointment of guardians ad litem see secs. 861, 862, chap. 3, of this title.

Bond of guardian.

SEC. 1723. Every such guardian shall give bond, with surety or sureties, to the United States, in such sum as the commissioner may order, with conditions as follows:

First. To make a true inventory of all the real estate, and of all goods, chattels, rights, and credits of the ward that shall come to his possession or knowledge, and to return the same to the commissioner at such time as the latter may order;

Second. To dispose of and manage all such estate and effects according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and in relation to the custody, education, and maintenance of the ward;

Third. To render, on oath, an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within a year after his appointment, and at such other times as the commissioner shall direct;

Fourth. At the expiration of his trust, to settle his accounts with the commissioner or with the ward or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be legally entitled thereto.

Carter Code, sec. 891; Charlton Code, sec. 891.

Testamentary guardian.

SEC. 1724. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or for a less time. And every mother may, by her last will in writing, appoint a guardian or guardians for any of her children, to continue during the minority of the child or for a less time: *Provided*, The father of such child or children is dead and has not appointed a guardian, or whenever, by judgment of divorce between such father and mother, the custody of such child or children has been awarded to the mother; and every such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed by the commissioner: *Provided*, Nothing in this section shall be con-

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strued to deprive either the surviving father or mother of the custody of the person of his or her children, such surviving parent being competent to transact his or her own business.

Carter Code, sec. 892; Charleton Code, sec. 892.

Bond of testamentary guardian.

SEC. 1725. Every such testamentary guardian shall give bond in like manner and with like conditions as is before required of a guardian appointed by the commissioner: *Provided*, When the testator in a will appointing the guardian shall have ordered or requested that such bond shall not be given the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the commissioner shall think proper to require it.

Carter Code, sec. 893; Charlton Code, sec. 893.

Guardian in judicial proceedings.

SEC. 1726. Nothing contained in this chapter shall impair the power of the district court or courts of a justice of the peace to appoint a guardian to defend the interests of any minor impleaded in such courts or interested in any suit or matter therein pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute, or defend any suit in his behalf.

Carter Code, sec. 894; Charlton Code, sec. 894.

NOTE.—As to appointment of guardian ad litem, see secs. 861, 862, chap. 3, of this title.

Guardians for insane persons, etc.

SEC. 1727. Commissioners in their respective precincts shall have power to appoint guardians to take care, custody, and management of the estates, real and personal, of all insane persons, idiots, and all who are incapable of conducting their own affairs, and the maintenance of their families and the education of their children.

Carter Code, sec. 895; Charlton Code, sec. 895.

White's Guardian *v.* Martin (2 Alaska Rep., 472, 498). Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671).

Guardian for insane person.

SEC. 1728. When the relatives or friends of any insane person, or any other persons inhabitants of the precinct in which such insane person resides, shall apply to the commissioner by petition in writing to have a guardian appointed for him, the commissioner shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person in question is incapable of taking care of himself, the commissioner shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Carter Code, sec. 896; Charlton Code, sec. 896.

White's Guardian *v.* Martin (2 Alaska Rep., 472, 498, 501). Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671). Sprigg *v.* Stump (8 Fed. Rep., 207). Corcoran *v.* Kostrometinoff (164 Fed. Rep., 685; 91 C C. A., 619). In re Guardianship of Corcoran (3 Alaska Rep., 263).

Powers and duties of guardians of insane person.

SEC. 1729. Every guardian so appointed for an insane person shall have the care and custody of the person of the ward and the management of all his estate, and he shall give bond to the United States in like manner and in like conditions as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward shall be omitted in the condition of the bond.

Carter Code, sec. 897; Charlton Code, sec 897.

White's Guardian *v.* Martin (2 Alaska Rep., 472).

Guardian for spendthrift.

SEC. 1730. When any person, by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his



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estate as to expose himself or his family to want or suffering, the commissioner for such precinct of which such spendthrift is a resident or inhabitant shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person complained of comes within the description contained in this section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Carter Code, sec. 898; Charlton Code, sec. 898.

Sturgis *v.* Sturgis (93 Pac. Rep., 696).

Order of notice to be filed with the clerk of district court.

SEC. 1731. After the order of notice has been issued, the commissioner shall cause a copy of the same to be filed in the office of the clerk of the district court; and if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales, or transfers of real or personal estate made by such spendthrift after such filing of the order of notice in the office of the district court, and before the termination of the guardianship, shall be null and void.

Carter Code, sec. 899; Charlton Code, sec. 899.

Allowance for defense of ward.

SEC. 1732. When a guardian shall be appointed for an insane person or spendthrift, the commissioner shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the proceeding.

Carter Code, sec. 900; Charlton Code, sec. 900.

Guardian for spendthrift, powers and duties.

SEC. 1733. Every guardian so appointed for a spendthrift shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged, and he shall give bond to the United States in like manner and with like condition as is before directed with respect to the guardian of an insane person.

Carter Code, sec. 901; Charlton Code, sec. 901.

Payment of debts in settlement of accounts.

SEC. 1734. Every guardian appointed under the provisions of this chapter shall pay all just debts due from his ward out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided by law. He shall also settle all accounts of the ward and demand, sue for, and receive all debts due to him, or may, with the approbation of the commissioner, compound for the same and give a discharge to the debtor upon receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward in all legal actions and proceedings, unless when another person is appointed for that purpose as guardian or next friend.

Carter Code, sec. 902; Charlton Code, sec. 902.

Savage *v.* McCorkle (21 Pac. Rep., 444). Sturgis *v.* Sturgis (93 Pac. Rep., 696).

NOTE.—As to appointment of guardian ad litem see secs. 861, 862, chap. 3, this title.

Management of ward's estate.

SEC. 1735. The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be

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necessary, for the maintenance and support of the ward and his family.

Carter Code, sec. 903; Charlton Code, sec. 903.

Sturgis *v.* Sturgis (93 Pac. Rep., (696).

Corcoran *v.* Kostrometinoff (164 Fed. Rep., 685).

Inventory and appraisal of the ward's estate.

SEC. 1736. Upon the taking of any inventory, as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward in like manner as is directed with respect to executors and administrators.

Carter Code, sec. 904; Charlton Code, sec. 904.

Sturgis *v.* Sturgis (93 Pac. Rep., 696).

Management and investment of property.

SEC. 1737. Commissioners in their respective precincts, on the application of a guardian or any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also all of the moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and such commissioner may make such further order and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Carter Code, sec. 905; Charlton Code, sec. 905.

In re Guardianship of Corcoran (3 Alaska Rep., 267).

Removal or resignation of guardian.

SEC. 1738. When any guardian appointed either by a testator or by a commissioner shall become insane or otherwise incapable of discharging his trust, or be unsuitable therefor, the commissioner, after notice to such guardian and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust when it shall appear to the commissioner proper to allow the same, and upon every such resignation or removal, and also upon the death of any guardian, the commissioner shall appoint another in his stead.

Carter Code, sec. 906; Charlton Code, sec. 906.

Marriage of female ward. Discharge of guardian.

SEC. 1739. The marriage of any female who is under guardianship as a minor shall operate as a discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the commissioner when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Carter Code, sec. 907; Charlton Code, sec. 907.

New bond.

SEC. 1740. The commissioner may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case and upon the like terms as are prescribed with regard to executors or administrators.

Carter Code, sec. 908; Charlton Code, sec. 908.

NOTE.—See secs. 1617, 1618, chap. 81, ante.

Action against sureties on guardian's bond.

SEC. 1741. No action shall be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the time when such guardian shall be discharged: *Provided*, If at the time of such discharge the person entitled to bring

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such action shall be out of the district the action may be commenced at any time within three years after his return to the district.

Carter Code, sec. 909; Charlton Code, sec. 909.

Proceedings in cases of suspected embezzlement.

SEC. 1742. Upon complaint made to the commissioner by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the commissioner may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided respecting persons suspected of concealing or embezzling effects of a deceased testator or intestate.

Carter Code, sec. 910; Charlton Code, sec. 910.

Guardians for nonresident minors.

SEC. 1743. When any minor or other person likely to be put under guardianship according to the provisions of this chapter shall reside without the district and shall have any estate therein, any friend of such person, or anyone interested in his estate, in expectancy or otherwise, may apply to the commissioner of any precinct in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the commissioner shall order, and after a full hearing and examination, if it shall appear proper the commissioner may appoint a guardian for such absent person.

Carter Code, sec. 911; Charlton Code, sec. 911.

White's Guardian *v.* Martin (2 Alaska Rep., 472, 501). Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671).

Powers and duties of such guardians.

SEC. 1744. Every guardian appointed according to the provisions of the preceding section shall have the same powers and duties with respect to any estate of the ward that may be found within the district, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Carter Code, sec. 912; Charlton Code, sec. 912.

White's Guardian *v.* Martin (2 Alaska Rep., 472, 473). Martin *v.* White (146 Fed. Rep., 461; 76 C. C. A., 671).

Bond of.

SEC. 1745. Every such guardian shall give bond to the United States in like manner and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and the account to be rendered by the guardian shall be confined to such estate and effects which shall come to his hands in the District, and that the provisions respecting the custody of the ward shall not be applicable unless the ward shall come to reside in the District.

Carter Code, sec. 913; Charlton Code, sec. 913.

First guardianship exclusive.

SEC. 1746. The guardianship which shall first be legally granted of any person residing without the District shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the commissioner of any other precinct.

Carter Code, sec. 914; Charlton Code, sec. 914.

Expenses and compensation.

SEC. 1747. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the commissioner before whom his accounts are settled shall consider just and reasonable.

Carter Code, sec. 915; Charlton Code, sec. 915.

Cutting *v.* Scherzinger (68 Pac. Rep., 393).

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Joint account.

SEC. 1748. When an account is rendered by two or more joint guardians, the commissioner may, in his discretion, allow the same upon the oath of any one of them.

Carter Code, sec. 916; Charlton Code, sec. 916.

"Insane person" and "spendthrift" defined.

SEC. 1749. The words "insane person" are intended to include every idiot, every person not of sound mind, every lunatic and distracted person; and the word "spendthrift" is intended to include anyone who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards contained in this code.

Carter Code, sec. 917; Charlton Code, sec. 917.

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# CHAPTER EIGHTY-NINE.

## OF THE SALE OF LANDS BY GUARDIAN, AND DISPOSITION OF PROCEEDS.


Sec.
1750. When guardian may sell real property of ward.
1751. Proceeds to be placed on interest.
1752. Application of proceeds.
1753. Investment of proceeds.
1754. Residue, when considered as real estate.
1755. Petition for license to sell
1756. Order to show cause.
1757. Service of order.
1758. When certificate of commissioners necessary.
1759. Bond of guardian.
1760. His oath.
1761. Notice of sale.
1762. License, how long in force.
1763. When foreign guardian may file copy of his appointment.
1764. When foreign guardian may be licensed to sell.
1765. Where proceedings may be instituted.
1766. Disposition of residue of proceeds.
1767. Costs, when to prevailing parties.
1768. Limitation of suits to recover estates sold by guardian.
1769. Certain irregularities not to avoid sale.
1770. Liability of guardian for misconduct.
1771. Sale, when not held void, although irregular.


June 6, 1900.
31 Stat. L., 477–479.

When guardian may sell real property of ward.

SEC. 1750. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor and proceeding therein in the manner hereinafter provided.

Carter Code, sec. 918; Charlton Code, sec. 918.

Proceeds to be placed on interest.

SEC. 1751. When it shall appear upon the representation of any such guardian that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein as hereinafter provided.

Carter Code, sec. 919; Charlton Code, sec. 919.

Application of proceeds.

SEC. 1752. If the estate be sold for the maintenance of the ward and his family, as provided in section seventeen hundred and fifty, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, so far as may be necessary, in like manner as if it had been the personal estate of the ward.

Carter Code, sec. 920; Charlton Code, sec. 920.

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Investment of proceeds.

SEC. 1753. If the estate is sold in order to put out and invest the proceeds as provided in section seventeen hundred and fifty-one, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the commissioner relating thereto.

Carter Code, sec. 921; Charlton Code, sec. 921.

Residue, when considered as real estate.

SEC. 1754. In every case of the sale of real estate as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward and shall be disposed of among the same persons and in the same manner as the real estate would have been if it had not been sold.

Carter Code, sec. 922; Charlton Code, sec. 922.

Petition for license to sell.

SEC. 1755. In order to obtain a license for such sale the guardian shall present to the commissioner of the precinct in which he was appointed guardian a petition therefor, setting forth the condition of the estate of his ward and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Carter Code, sec. 923; Charlton Code, sec. 923.

Spriggs *v.* Stump (8 Fed. Rep., 217). Gager *v.* Henry (5 Saw. Rep., 237). Walker *v.* Goldsmith (12 Pac. Rep, 537). Severns *v.* Jerke (3 Saw. Rep., 353). McCulloch *v.* Estees (25 Pac. Rep., 724). Trutch *v.* Bunnell (4 Pac. Rep., 588). Conklin *v.* La Dow (54 Pac. Rep., 216).

Order to show cause.

SEC. 1756. If it shall appear to the commissioner from such petition that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, he shall thereupon make an order directing the next of kin of the ward and all persons interested in the estate to appear before him at a time and place to be therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Carter Code, sec. 924; Charlton Code, sec. 924.

Gager *v.* Henry (5 Saw. Rep., 235). Walker *v.* Goldsmith (12 Pac. Rep., 537).

Service of order.

SEC. 1757. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks in a newspaper circulating in the District, to be specified by the commissioner.

Carter Code, sec. 925; Charlton Code, sec. 925.

When certificate of commissioners necessary.

SEC. 1758. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioner of the precinct of which the ward is an inhabitant shall certify in writing his approbation of the proposed sale.

Carter Code, sec. 926; Charlton Code, sec. 926.

Bond of guardian.

SEC. 1759. Every guardian licensed to sell real estate as aforesaid shall, before the sale, give bond to the United States, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

Carter Code, sec. 927; Charlton Code, sec. 927.

Goldsmith *v.* Gilliland (10 Saw. Rep., 606; 24 Fed. Rep., 154).

His oath.

SEC. 1760. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the commissioner or

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some other officer competent to administer the same, in substance as follows: That in disposing of the estate which he is licensed to sell he will use his best judgment in fixing the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

Carter Code, sec. 928; Charlton Code, sec. 928.

Fuller *v.* Hager (83 Pac. Rep., 782).

Notice of sale.

SEC. 1761. He shall also give public notice of the time and place of sale and shall proceed therein in like manner as is prescribed for executors and administrators; and the evidence of giving such notice may be perpetuated in the same manner and with the same effect as is provided in the case of sales of real estate by executors and administrators.

Carter Code, sec. 929; Charlton Code, sec. 929.

Walker *v.* Goldsmith (12 Pac. Rep., 537).

License, how long in force.

SEC. 1762. No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same.

Carter Code, sec. 930; Charlton Code, sec. 930.

When foreign guardian may file copy of his appointment.

SEC. 1763. When any minor, insane person, or spendthrift residing out of the District shall be put under guardianship in the State or county in which he resides, and shall have no guardian appointed in the District, the foreign guardian may file an authenticated copy of his appointment with the commissioner of any precinct in which there may be real estate of the ward; after which he may be licensed by the commissioner to sell the real estate of the ward in any precinct in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in the District, except in the particulars hereinafter mentioned.

Carter Code, sec. 931; Charlton Code, sec. 931.

When foreign guardian may be licensed to sell.

SEC. 1764. Every foreign guardian so licensed to sell real estate shall take and subscribe the oath in the like case of guardians appointed in the District, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in the District, and may perpetuate the evidence of the notice in the same manner.

Carter Code, sec. 932; Charlton Code, sec. 932.

Where proceedings may be instituted.

SEC. 1765. All the proceedings required to be had before the commissioner in any precinct in the District respecting such sale by a foreign guardian shall be had before the commissioner for the precinct in which the authenticated copy of his appointment is filed.

Carter Code, sec. 933; Charlton Code, sec. 933.

Disposition of residue of proceeds.

SEC. 1766. Upon every such sale by a foreign guardian the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons and in the same proportions as the real estate would have been according to the laws of the District if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond to the United States, with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

Carter Code, sec. 934; Charlton Code, sec. 934.

Costs, when to prevailing parties.

SEC. 1767. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the commissioner that either the petition or the objec-

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tion is unreasonable, the commissioner shall give judgment for costs against the losing party in the cause.

Carter Code, sec. 935; Charlton Code, sec. 935.

Limitation of suits to recover estates sold by guardian.

SEC. 1768. No action for the recovery of any estate sold by a guardian under the provisions of this chapter shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the District, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability or after their return to the District.

Carter Code, sec. 936; Charlton Code, sec. 936.

Certain irregularities not to avoid sale.

SEC. 1769. In case of an action relating to any estate sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings: *Provided*, It shall appear—

First. That the guardian was licensed to make the sale by a commissioner of competent jurisdiction;

Second. That he gave a bond that was approved by the commissioner;

Third. That he took the oath prescribed in this chapter;

Fourth. That he gave notice of the time and place of sale as prescribed by law; and

Fifth. That the premises were sold accordingly at public auction, and are held by one who purchased them in good faith.

Carter Code, sec. 937; Charlton Code, sec. 937.

Gager *v.* Henery (5 Saw. Rep., 237). Hobart *v.* Upton (2 Saw. Rep., 302). Walker *v.* Goldsmith (12 Pac. Rep., 537). McCulloch *v.* Estees (25 Pac. Rep., 724). Fuller *v.* Hager (83 Pac. Rep., 782).

Liability of guardian for misconduct.

SEC. 1770. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in an action on the bond of such guardian or otherwise as the case may require.

Carter Code, sec. 938; Charlton Code, sec. 938.

Sale, when not held void, although irregular.

SEC. 1771. If the validity of any sale made by a guardian under this chapter shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: *Provided*, The guardian was authorized to make the sale by the proper commissioner, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Carter Code, sec. 939; Charlton Code, sec. 939.

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# CHAPTER NINETY.

## OF APPEAL IN PROBATE CASES.


Sec.
1772. Appeals to district court.
1773. Exceptions and orders of commissioner.
1774. Duty of district judge.
1775. Proceedings in such cases.


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June 6, 1900.
31 Stat. L., 479–480.

Appeals to district court.

SEC. 1772. There shall be an appeal to the district court of the District of Alaska from all orders of the commissioners exercising the jurisdiction of a court of probate.

Carter Code, sec. 940; Charlton Code, sec. 940.

In re Estate Gladdough (1 Alaska Rep., 745). In re Thompkins McIntyre Estate (1 Alaska Rep., 73). In re estate Wm. Bonnett (1 Alaska Rep., 159). Esterly *v.* Rua (122 Fed. Rep., 609; 58 C. C. A., 548; 2 Alaska Rep., 679). White's Guardian *v.* Martin (2 Alaska Rep., 495). Linge's Admínr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 19, 27). Decker *v.* Decker (3 Alaska Rep., 123).

Exceptions and orders of commissioner.

SEC. 1773. In the case of decedents any heir, legatee, devisee, creditor, or other person interested in the estate, and in the case of minors, lunatics, and habitual drunkards, any creditor or relative within the third degree of consanguinity, may file with the commissioner exceptions to any order of such commissioner granting or revoking letters of administration or of guardianship, allowing semiannual or final accounts, allowing or rejecting claims, directing the payment of debts or legacies or the distribution of estates, ordering the sale or disposal of real or personal property, or other proceeding. Upon the filing of such exception the commissioner shall make a transcript of all files, papers, and evidence pertaining to such order or proceeding and forward the same to the clerk of the district court.

Carter Code, sec. 941; Charlton Code, sec. 941.

Sylvester's Admínr. *v.* Wilson's Admínr. (2 Alaska Rep., 333). Linge's Admínr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 19, 27).

Duty of district judge.

SEC. 1774. Upon the filing of such exceptions the district judge shall proceed on due notice to hear and determine the same at such time and in such manner as he shall prescribe by order, and for that purpose may receive and entertain affidavits and depositions or hear oral evidence.

Carter Code, sec. 942; Charlton Code, sec. 942.

Linge's Admínr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 19, 27).

Proceedings in such cases.

SEC. 1775. Upon such hearing the district court or judge thereof shall determine the issues so raised according to the very right of the matter and make such order in the premises as he may see fit, which order shall be entered in a docket to be kept by the clerk of the court for that purpose, properly indexed, and a copy of the same shall be forwarded to the commissioner before whom the exceptions were filed, who shall thereupon proceed in accordance with such order. Such orders shall be deemed a judgment, subject to appeal in the manner provided for appeals from judgments in the district court.

Carter Code, sec. 943; Charlton Code, sec. 943.

Sylvester's Admínr. *v.* Wilson's Admínr. (2 Alaska Rep., 334). Linge's Admínr. *v.* Alaska Treadwell Co. (3 Alaska Rep., 19, 27). In re McCarty's Estate (3 Alaska Rep., 248). Alaska Treadwell G. M. Co. *v.* Cheney (162 Fed. Rep., 593). Corcoran *v.* Kostrometinoff (164 Fed. Rep., 685).

# CHAPTER NINETY-ONE.

## OF THE RECORDS AND FILES OF A JUSTICE'S COURT.

Sec.
1776. Records and files of a justice's court, what constitutes.
1777. Docket of justice, what entries to be made therein.
1778. Docket and files, public writings.

June 6, 1900.
31 Stat. L., 480–481.

SEC. 1776. The records and files of a justice's court are the docket and all papers and process filed in or returned to such court concern-

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Records and files of a justice's court, what constitutes.

ing or belonging to any proceeding authorized to be had or taken therein or before the justice of the peace who holds such court.

Carter Code, sec. 944; Charlton Code, sec. 944.

Hackleman *v.* Geise (1 Alaska Rep., 568). Tyler *v.* State (42 Pac. Rep., 518). Guarantee Loan Assn. *v.* Osborn (64 Pac. Rep., 383). Jacobs *v.* Oren (48 Pac. Rep., 431).

Docket of justice, what entries to be made therein.

SEC. 1777. The docket of a justice of the peace is a book in which he must enter—

First. The title of every action or proceeding commenced in his court or before him, with the names of the parties thereto and the time of the commencement thereof.

Second. The date of making or filing any pleading, and, when the same is made orally, a plain statement of the substance thereof and the verification thereto when one is required.

Third. An order allowing a provisional remedy, and the date of issuing and returning the summons or other process.

Fourth. The time when the parties, or either of them, appear, or their failure to do so.

Fifth. Every postponement of a trial or proceeding, and upon whose application, and to what time.

Sixth. The demand for a jury, if any, and by whom made; the order for a jury, and the time appointed for trial thereby.

Seventh. The return of an order for a jury, the names of the persons impaneled and sworn as a jury, and the names of all witnesses sworn, and at whose request.

Eighth. The verdict of the jury, and when given; and if the jury disagree and are discharged without giving a verdict, a statement of such disagreement and discharge.

Ninth. The judgment of the court and when given.

Tenth. The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking thereof, and the justification of the sureties therein.

Eleventh. Satisfaction of the judgment or any part thereof.

Twelfth. A memorandum of all orders relating to the admission of bail, taking bail, or commitment for want thereof.

Thirteenth. All other matters which may be material or specially required by any statute.

Carter Code, sec. 945; Charlton Code, sec. 945.

Hackleman *v.* Geise (1 Alaska Rep., 568). Perry *v.* Gholson (65 Pac. Rep., 601). State *v.* Connolley (90 Pac. Rep., 902).

NOTE.—For renewal of execution see sec. 1825, chap. 96, post.

Docket and files, public writings.

SEC. 1778. The docket and files of a justice's court are to be safely and securely kept by the justice of the peace, and by him delivered to his successor in office when demanded. Such docket and files are public writings.

Carter Code, sec. 946; Charlton Code, sec. 946.

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## CHAPTER NINETY-TWO.

### OF GENERAL PROVISIONS IN RELATION TO CIVIL ACTIONS IN JUSTICE'S COURT.


Sec.
1779. Code of Civil Procedure to govern.
1780. Summons, by whom issued, and requirements of.
1781. Same subject.
1782. Service of summons.
1783. When served and by whom.
1784. Undertaking for costs, when may be required.
1785. Sureties in such cases.


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Sec.
1786. Provisional remedies.
1787. Who may serve writ of arrest, attachment, and order for the delivery of personal property.
1788. Disposition of defendant arrested in civil action.
1789. Defendant entitled to give bail.
1790. Undertaking of bail.
1791. Undertaking for delivery of personal property.
1792. Real property can not be attached by process from a justice's court.
1793. Justification of sureties.

June 6, 1900. 31 Stat. L., 481, 482. Code of Civil Procedure to govern.

SEC. 1779. A civil action in a justice's court is commenced and prosecuted to final determination, and judgment enforced therein, in the manner provided in this code for similar actions in courts of record, except as otherwise provided: *Provided*, Necessary disbursements shall in all cases be allowed the prevailing party.

Carter Code, sec. 947; Charlton Code, sec. 947.

Johnston *v.* Sutherland No. 1255. Second Division (unreported). Burns *v.* Payne (49 Pac. Rep., 884). Mulkey *v.* Day (89 Pac. Rep., 957).

NOTE.—As to where civil actions may be begun in justice's court, see sec. 1536, chap. 70, of this title.

Summons, by whom issued, and requirements of.

SEC. 1780. The summons shall be issued and signed by the justice, and must require the defendant to appear before such justice at a time and place to be named therein not less than six nor more than twenty days from the date thereof, to answer the complaint of the plaintiff, or judgment for want thereof will be taken against him.

Carter Code, sec. 948; Charlton Code, sec. 948.

N. P. Cycle Co. *v.* Thomas (38 Pac. Rep., 307). Perry *v.* Gholson (65 Pac. Rep., 601).

Same subject.

SEC. 1781. The summons shall be issued and signed by the justice, and may be in the following form:

To the United States marshal of the District of Alaska or any deputy: In the name of the United States of America we command you to summon ——— to appear before the undersigned, a justice of the peace in ——— precinct in said District, on the ——— day of ———, 19——, at the hour of ——— o'clock, in the ——— of said day, at ———, in the said precinct, to answer the complaint of ———, founded upon an instrument of writing (or note or account, or for trespass or injury to property, or any similar statement, as the case may be), and wherein he demands ——— dollars. Given under my hand this ——— day of ———, 19——.

A B,
Commissioner and ex officio Justice of the Peace.

Carter Code, sec. 949; Charlton Code, sec. 949.

Stanley *v.* J. N. Rachofsky & Son (93 Pac. Rep., 354).

Service of summons.

SEC. 1782. The service of the summons may be made as follows: First, by delivering a copy thereof to the defendant; or, second, by leaving a copy of the summons at the usual place of abode of the defendant, with some person of the family above the age of fifteen years; and if a defendant shall refuse to hear the summons read, or to receive a copy thereof, at the offer of the officer to read the same or to deliver a copy thereof, such refusal shall be a sufficient service of the summons; or if the defendant be a corporation, then to the president, secretary, or a managing or local agent thereof.

Carter Code, sec. 950; Charlton Code, sec. 950.

NOTE.—As to service on railroads, see sec. 768, chap. 33, Civil Code.

As to service generally, see sec. 878, chap. 4, of this title.

When served and by whom.

SEC. 1783. The summons must be served at least five days before the time therein required for the defendant to appear.

Carter Code, sec. 951; Charlton Code, sec. 951.

Wilson *v.* Maddock (5 Or. Rep., 480). Taylor *v.* Jenkins (3 Pac. Rep., 681).

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Undertaking for costs, when may be required.

SEC. 1784. If the plaintiff is a nonresident of the precinct, the justice may require him to give an undertaking, with one or more sureties, for the costs and disbursements of the action before issuing the summons, and if at any time before the commencement of the trial the defendant apply therefor, the justice must require such plaintiff to give such undertaking; but if the plaintiff is a resident of the precinct the justice may, in his discretion, upon a like application on the part of the defendant require such plaintiff to give such undertaking.

Carter Code, sec. 952; Charlton Code, sec. 952.

Dray *v.* Mayer (5 Or. Rep., 185). | Long *v.* Thompson (55 Pac. Rep., 978).

Sureties in such cases.

SEC. 1785. The undertaking may be in substantially the following form: "I, A B," or "We, A B and C D, undertake to pay E F, the defendant in this action, all costs and disbursements that may be adjudged to him in this action." The sureties must possess the qualifications of bail upon arrest, and if required by the defendant must justify in a sum not less than fifty dollars. A deposit of fifty dollars with the justice, or such less sum as he may deem sufficient, is equivalent to giving the required undertaking; and if the undertaking or deposit in lieu thereof is not given or made upon the day the same is demanded the justice must dismiss the action as for want of prosecution.

Carter Code, sec. 953; Charlton Code, sec. 953.

NOTE.—As to qualifications of bail on arrest, see sec. 941, chap. 12, of this title.

Provisional remedies.

SEC. 1786. In a civil action in a justice's court a plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in a court of record. All affidavits, orders, and undertakings for such remedies are to be taken or made and filed with the justice, and such process is to be issued by and made returnable before him.

Carter Code, sec. 954; Charlton Code, sec. 954.

Burns *v.* Payne (49 Pac. Rep. 884). | Carlon *v.* Dickson (6 Pac. Rep., 500). Hume *v.* Norris (5 Or. Rep., 480). |

Who may serve writ of arrest, attachment, and order for the delivery of personal property.

SEC. 1787. A writ of arrest, of attachment, and order for the delivery of personal property claimed in the action may be served and executed by any person authorized to serve a summons.

Carter Code, sec. 955; Charlton Code, sec. 955.

Disposition of defendant arrested in civil action.

SEC. 1788. A defendant who has been arrested in a civil action must, if he require it, be at once taken before the justice who issued the writ, for the purpose of giving bail. If he do not so require, the officer making the arrest shall keep him in his custody, and take him before such justice on the day and at the hour the defendant is required to appear and answer.

Carter Code, sec. 956; Charlton Code, sec. 956.

Valentine *v.* Roberts (1 Alaska Rep., 536).

Defendant entitled to give bail.

SEC. 1789. Upon the defendant being brought before the justice, either on the day on which he is required to appear and answer or before, he must be allowed to give bail if he desire to.

Carter Code, sec. 957; Charlton Code, sec. 957.

Undertaking of bail.

SEC. 1790. The undertaking of bail may be given with one or more sufficient sureties, and must be taken by the justice. The plaintiff may then and there except to the sufficiency of the bail, and unless he do so he shall be deemed to have accepted it.

Carter Code, sec. 958; Charlton Code, sec. 958.

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Undertaking for delivery of personal property.

SEC. 1791. The undertaking for an order for the delivery of personal property claimed in the action shall be taken by the justice who makes the order, and he shall require the sureties therein to justify as bail upon arrest; and no exceptions to the sufficiency of such sureties shall thereafter be allowed.

Carter Code, sec. 959; Charlton Code, sec. 959.

Carlon *v.* Dickson (6 Pac. Rep., 500).

Real property can not be attached by process from a justice's court.

SEC. 1792. Real property or any interest therein can not be attached upon a writ of attachment in a civil action in a justice's court.

Carter Code, sec. 960; Charlton Code, sec. 960.

Justification of sureties.

SEC. 1793. Whenever sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the justice in whose court the action is pending, and upon the notice prescribed in such cases by this code, or upon a shorter notice, to be prescribed by order of the justice.

Carter Code, sec. 961; Charlton Code, sec. 961.

NOTE.—As to notice of justification of bail, see sec. 940, chap. 12, of this title.

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## CHAPTER NINETY-THREE.

### OF THE PLEADINGS IN JUSTICE'S COURT.


Sec.
1794. No formal pleadings necessary.
1795. Same subject.
Sec.
1796. Action on lost instrument.


June 6, 1900.
31 Stat. L., 483.
No formal pleadings necessary.

SEC. 1794. No formal pleadings on the part of either plaintiff or defendant shall be required in a justice's court; but before any process shall be issued in any action the plaintiff shall file with the justice the instrument sued on and a statement of the account as of the facts constituting the cause of action upon which the action is founded; and the defendant shall, before the trial is commenced, file the instrument, account, or statement of his set-off or counterclaim relied upon.

Carter Code, sec. 962; Charlton Code, sec. 962.

Everton *v.* Smith (1 Alaska Rep., 425).

Same subject.

SEC. 1795. When the action is founded on any instrument of writing purporting to have been executed by the defendant, and the debt or damage claimed may be ascertained by such instrument, the same shall be filed with the justice, and no other statement or pleading shall be required. If the action be upon an account, a bill of the items constituting the account shall be filed. In all other cases a statement of the facts constituting the cause of action and the amount or sum demanded shall be filed with the justice; but no action shall be dismissed or discontinued for want of any such statement as cause of action, or for any defect or insufficiency thereof, if the plaintiff shall file the instrument or account as a sufficient statement before the jury is sworn or the trial commenced, or when required by the justice.

Carter Code, sec. 963; Charlton Code, sec. 963.

Action on lost instrument.

SEC. 1796. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the justice the affidavit of himself, or some other credible person, stating such loss or destruction and setting forth the substance of such instrument.

Carter Code, sec. 964; Charlton Code, sec. 964.

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# CHAPTER NINETY-FOUR.

## OF THE POSTPONEMENT OF TRIALS IN JUSTICE'S COURT.

Sec.
1797. When postponement allowed.
1798. When it discharges defendant from arrest.
1799. When deposition to be taken.
1800. Change of place of trial.
1801. Costs of the same.
1802. Change, when deemed completed.
1803. Proceeding when title to land is in issue.

June 6, 1900.

31 Stat. L., 483, 484.

When postponement, allowed.

SEC. 1797. When a cause is at issue upon a question of fact the justice must, upon sufficient cause shown, on the application of either party, postpone the trial for a period not exceeding sixty days.

Carter Code, sec. 965; Charlton Code, sec. 965.

Hackleman *v.* Geise (1 Alaska Rep., 568).

NOTE.—For grounds for postponement of trial, see cases cited under sec. 1001, chap. 15, of this title.

When it discharges defendant from arrest.

SEC. 1798. When the defendant is in custody a postponement of the trial granted upon the application of the plaintiff for a longer period than one day discharges the defendant from such arrest; and in such case the justice must indorse upon the writ of arrest, "The defendant is discharged from custody upon the within process," and sign the same with his name and office.

Carter Code, sec. 966; Charlton Code, sec. 966.

When deposition to be taken.

SEC. 1799. An application for the postponement of a trial must be granted unless the party applying therefor, if required by the adverse party, consent to take the deposition of any witness of such adverse party then in attendance upon the court. If the consent is given, the justice must take such deposition, and the same may be read on the trial, subject to the same objections as if the witness were present and gave the testimony orally.

Carter Code, sec. 967; Charlton Code, sec. 967.

NOTE.—The Oregon statute is as follows: "An application for the postponement of a trial must *not* be granted unless, etc.," the omission of the word "not," in the above section, is obviously erroneous.

Change of place of trial.

SEC. 1800. The justice may change the place of trial, on notice of either party to the action, when it appears from the affidavit of such party either—

First. That the justice is a party to, or directly interested in, the event of the action, or connected by consanguinity or affinity, within the third degree, with the adverse party or those for whom he prosecutes or defends;

Second. That the justice is so prejudiced against the party making the motion that he can not expect an impartial trial before the justice;

Third. That the convenience of parties and witnesses would be promoted by such change, and that the motion is not made for the purpose of delay.

The motion for change of the place of trial can not be made or allowed in any action until after the cause is at issue on a question of fact only. If the motion is allowed, the change shall be made to the nearest justice. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. When the place of trial has been changed, the justice shall forthwith transmit to the nearest justice a transcript of the proceedings had in such cause, with all the original papers filed therein.

Carter Code, sec. 968; Charlton Code, sec. 968.

Packwood *v.* State (33 Pac. Rep., 74). Woldenberg *v.* Haines (57 Pac. Rep., 627). White *v.* Brown (101 Pac. Rep., 900).

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Costs of the same.

SEC. 1801. The costs of such change of venue shall be paid by the party applying therefor, and not taxed as a part of the costs in the case: *Provided*, It shall not be necessary to issue new subpœnas to witnesses; but the witnesses shall appear before the justice before whom the cause has been transferred without the issue of any other notice than the allowance of the motion to change the venue.

Carter Code, sec. 969; Charlton Code, sec. 969.

Change, when deemed completed.

SEC. 1802. Upon the filing of the transcript and papers with the justice to whom the cause has been transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced before such justice.

Carter Code, sec. 970; Charlton Code, sec. 970.

Proceeding when title to land is in issue.

SEC. 1803. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution in the same manner as if the action had been originally commenced therein; and the costs shall abide with the event of the action.

Carter Code, sec. 971; Charlton Code, sec. 971.

Sweek v. Galbraith (6 Pac. Rep., 220). Marlarkey *v.* O'Leary (56 Pac. Rep., 521). Heiney *v.* Heiney (73 Pac. Rep., 1038). German Evan. Reformed Bethany Ch. *v.* Schendler (108 Pac. Rep., 178).

NOTE.—As to lack of jurisdiction, see sec. 1535, chap. 70, of this title.

## CHAPTER NINETY-FIVE.

### OF TRIAL BY JURY IN JUSTICE'S COURT.


Sec.
1804. Demand for jury, how and when made.
1805. Trial by court, how judgment may be given.
1806. Order to summon jury.
1807. When to require jurors to appear.
1808. Officer to summon persons qualified to serve.
1809. Order for jury, how served.
1810. Deficiency, how supplied.
1811. Number of peremptory challenges.
1812. Qualifications of jurors in justice's court.


June 6, 1900.
31 Stat. L., 484–485.

Demand for jury, how and when made.

SEC. 1804. When a cause is at issue upon a question of fact, if either party then demand a jury trial, and deposit with the justice the trial fee, such issue must be tried by a jury and not the court; but otherwise it must be tried by the court.

Carter Code, sec. 972; Charlton Code, sec. 972.

NOTE.—As to trial fee see secs. 1587 to 1592, 1594, chap. 78, this title.

Trial by court, how judgment may be given.

SEC. 1805. When an issue of fact is tried by the justice it is not necessary that there should be any special statement of the facts found or law determined on such trial, but it is sufficient for the court to give judgment generally, as the law and the evidence may require, for the plaintiff or the defendant, setting forth therein for what amount, or what relief, or to what effect the same is given.

Carter Code, sec. 973; Charlton Code, sec. 973.

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Order to summon jury.

SEC. 1806. When a jury has been demanded by a party to an action in a justice's court, the justice must make an order in writing, directed to the marshal or any deputy, or to any person authorized to act as a constable therein, commanding him to summon six persons to serve as jurors in the action between the parties, naming them, at a time and place to be named therein.

Carter Code, sec. 974; Charlton Code, sec. 974.

When to require jurors to appear.

SEC. 1807. The order shall require the jurors to appear before the justice forthwith, or at some time after it to which the trial of the issue may be postponed.

Carter Code, sec. 975; Charlton Code, sec. 975.

Officer to summon persons qualified to serve.

SEC. 1808. The officer serving the order for a jury must do so impartially, by selecting only such persons as he knows or has good reason to believe are qualified according to law to serve as jurors in the court to which they are summoned and in the particular action for which they are selected.

Carter Code, sec. 976; Charlton Code, sec. 976.

Order for jury, how served.

SEC. 1809. The officer must serve the order by giving notice to each of the persons selected of the time and place he is required to appear, and for what purpose, and return the same according to the direction therein, with the names of the persons summoned, verified by his own certificate.

Carter Code, sec. 977; Charlton Code, sec. 977.

Deficiency, how supplied.

SEC. 1810. If a sufficient number of jurors do not appear at the time and place required, or if any of those appearing are peremptorily challenged, or upon a challenge for cause found disqualified, the justice must order the proper officer to summon a sufficient number of other qualified persons, until the jury is completed.

Carter Code, sec. 978; Charlton Code, sec. 978.

NOTE.—For challenges for cause see sec. 2232 et seq., chap. 14, Code Criminal Procedure, Title XV.

Number of peremptory challenges.

SEC. 1811. Each party is entitled to two peremptory challenges and no more.

Carter Code, sec. 979; Charlton Code, sec. 979.

NOTE.—For peremptory challenges see sec. 2231, chap. 14, Code Criminal Procedure, Title XV.

Qualifications of jurors in justice's court.

SEC. 1812. A person competent to act as a juror in a justice's court must possess the qualifications prescribed by this code for jurors in the district court, and must also be an inhabitant of the precinct in which the court is holden at the time he is summoned.

Carter Code, sec. 980; Charlton Code, sec. 980.

NOTE.—For qualifications of jurors see sec. 2120, chap. 4, Title XV, Code Criminal Procedure. For exemptions see sec. 2121, chap. 4, Title XV, Code Criminal Procedure.

## CHAPTER NINETY-SIX.

### OF JUDGMENT AND EXECUTION IN JUSTICE'S COURT.


Sec.
1813. Docketing judgment in district court.
1814. Effect of same.
1815. Setting of mutual judgment.
1816. Conditions of judgment proposed as set-off.
1817. When transcript stays execution.
1818. If judgments mutual, justice must set-off.
1819. Judgment for difference.
1820. Judgment does not affect title to real property.


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Sec.
1821. Execution to enforce judgment when against real property.
1822. Execution, when returnable, and by whom served.
1823. Filing transcript in another precinct.
1824. Transcript of judgment, how enforced.
1825. Execution, renewal of.
1826. Justice may enforce judgment given by his predecessor.

June 6, 1900. 31 Stat. L., 485-486.

Docketing judgment in district court.

SEC. 1813. Whenever a judgment is given in a justice's court in favor of anyone, for the sum of ten dollars or more, exclusive of costs or disbursements, the party in whose favor such judgment is given may, within one year thereafter, file a certified transcript thereof with the clerk of the district court, and thereupon such clerk shall immediately docket the same in the judgment docket of the district court.

Carter Code, sec. 981; Charlton Code, sec. 981.

Dearborn *v.* Patten (4 Or. Rep., 59).
White *v.* Espey (28 Pac. Rep., 71).
Lovelady *v.* Burgess (52 Pac. Rep., 25). Denny *v.* Bean (93 Pac. Rep., 693).

Effect of same.

SEC. 1814. From the time of docketing a judgment of a district court, as provided in the last section, the same shall be a lien upon the real property of the defendant, as if it were a judgment of the district court wherein it is docketed.

Carter Code, sec. 982; Charlton Code, sec. 982.

Setting off mutual judgment.

SEC. 1815. A party against whom a judgment is given in a justice's court may, upon three days' notice to the adverse party, apply to the justice of such court to have another judgment given in a justice's court, between the same parties and against such adverse party, set off against such first-mentioned judgment.

Carter Code, sec. 983; Charlton Code, sec. 983.

Conditions of judgment proposed as set-off.

SEC. 1816. There must be no existing right of appeal from the judgment proposed as a set-off; and if such judgment was given in another court than the one where the application is made, the party proposing such set-off must produce a transcript of such judgment, certified by the proper justice, which certificate shall also state how much of the judgment remains unsatisfied, and that the transcript is given for the purpose of being set off against the judgment to which it is proposed as a set-off.

Carter Code, sec. 984; Charlton Code, sec. 984.

When transcript stays execution.

SEC. 1817. The justice making such transcript and certificate shall make an entry thereof in his docket, and thereafter all proceedings to enforce such judgment shall be stayed, unless the transcript be returned, with the certificate of the proper justice indorsed thereon, to the effect that it has not been allowed to be set off.

Carter Code, sec. 985; Charlton Code, sec. 985.

If judgments mutual, justice must set off.

SEC. 1818. If, upon the hearing of the application, the justice finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

Carter Code, sec. 986; Charlton Code, sec. 986.

Judgment for difference.

SEC. 1819. If there is any difference in the amount of the two judgments, judgment for the difference must be given in favor of the party owning the largest judgment. If the justice refuse to allow the set-off, he shall so certify on the transcript and return it to the party making the application.

Carter Code, sec. 987; Charlton Code, sec. 987.

Judgment does not affect title to real property.

SEC. 1820. Although the title to real property may be controverted or questioned in an action in a justice's court, the judgment in such



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action in no way affects or determines such title as between the parties thereto or otherwise.

Carter Code, sec. 988; Charlton Code, sec. 988.

NOTE.—See sec 1535, chap. 70, and sec. 1803, chap. 94, of this title.

Execution to enforce judgment when against real property.

SEC. 1821. Execution to enforce a judgment in a justice's court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a justice has been duly docketed in the district court thereafter it must be enforced as a judgment of such district court.

Carter Code, sec. 989; Charlton Code, sec. 989.

Glaze *v.* Lewis (7 Pac. Rep., 354).

Execution, when returnable and by whom served.

SEC. 1822. An execution issued by a justice must be made returnable in thirty days from the date thereof, and may be directed to the marshal or any deputy or other officer authorized to act as constable in such precinct, and must be executed by any of such officers when delivered to him.

Carter Code, sec. 990; Charlton Code, sec. 990.

Filing transcript in another precinct.

SEC. 1823. When an execution is returned unsatisfied in whole or in part for want of goods and chattels of the defendant whereon to levy, the party entitled to the benefit of the judgment may have a certified transcript thereof and file the same with any justice in any other precinct.

Carter Code, sec. 991; Charlton Code, sec. 991.

Transcript of judgment, how enforced.

SEC. 1824. Upon the filing of a transcript the justice must make an entry thereof in his docket, and thereafter execution may issue to enforce such judgment, or any part thereof remaining unsatisfied, as if it had been given by such justice with whom the transcript is filed.

Carter Code, sec. 992; Charlton Code, sec. 992.

Execution, renewal of.

SEC. 1825. At any time before the expiration of the return day of the execution it may be renewed for another period of thirty days, at the request of the plaintiff, by an indorsement to that effect, made by the justice thereon. Such indorsement must be dated, and if any part of such execution has been satisfied, must state the amount then due thereon. An entry of such renewal must also be made in the docket of the justice.

Carter Code, sec. 993; Charlton code, sec. 993.

Justice may enforce judgment given by his predecessor.

SEC. 1826. A justice of the peace has authority and power to enforce a judgment given by his predecessor in office, or by a justice whose docket has been transferred to him, and to complete any unfinished business begun before such predecessor, or entered in such docket, as if the same had been given or begun before himself.

Carter Code, sec. 994; Charlton Code, sec. 994.

## CHAPTER NINETY-SEVEN.

### OF APPEALS FROM JUSTICE'S COURT IN CIVIL ACTIONS.


Sec.
1827. Appeal, who may take, and from what judgment.
1828. To what court and within what time.
1829. How taken.
1830. Undertaking, when to stay proceedings.
1831. When proceedings stayed by undertaking for costs.
1832. Allowance of appeal and return of execution.
1833. Qualification and justification of sureties.
1834. Transcript, when filed and what constitutes.
1835. Appeal, how perfected and tried.
1836. Dismissal of appeal.
1837. Judgment in the appellate court.
1838. Defective undertaking, how cured.
1839. Amendment of pleadings in the appellate court.


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June 6, 1900. 31 Stat. L., 487-488.

Appeal, who may take, and from what judgment.

SEC. 1827. Either party may appeal from a judgment given in a justice's court, in a civil action, when the sum in controversy is not less than fifty dollars, or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs in either case, except when the sum is given by confession or for want of an answer, as prescribed in this chapter, and not otherwise.

Carter Code, sec. 995; Charlton Code, sec. 995.

Decker *v.* Williams (73 Fed. Rep., 308; 1 Alaska Rep., 721). Bennett *v.* Forest (69 Fed. Rep., 421, 1 Alaska Rep., 722). Everton *v.* Smith (1 Alaska Rep., 423). Moore *v.* Rennick (1 Alaska Rep., 173). Gibson *v.* Langdon (2 Alaska, Rep., 166). Long *v.* Sharp (5 Or. Rep., 440). Whipple *v.* S. P. Co. (55 Pac. Rep., 975). Kearns *v.* Follansby (16 Pac. Rep., 478). Willis *v.* Marks (45 Pac. Rep., 293). Burns *v.* Payne (49 Pac. Rep. 884). Troy *v.* Hallgarth (57 Pac. Rep., 374). Odell *v.* Godfrey (11 Pac. Rep., 190). Ramsey *v.* Pettengill (12 Pac. Rep., 439). Summers *v.* Herrington (13 Pac. Rep., 300).

NOTE.—See sec. 1841, chap. 98, of this title.

To what court and within what time.

SEC. 1828. The appeal is taken to the district court, and may be taken within thirty days from the date of the entry of the judgment. The party appealing is known as the appellant and the adverse party the respondent, but the title of the action is not thereby changed.

Carter Code, sec. 996; Charlton Code, sec. 996.

Lemmons *v.* Huber (77 Pac. Rep., 836).

How taken.

SEC. 1829. An appeal is taken by serving a notice thereof on the adverse party or his attorney and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Carter Code, sec. 997; Charlton Code, sec. 997.

U. S. *v.* Larsen (2 Alaska Rep., 580). Kingsbury *v.* Pac. Coal & Trans. Co. (3 Alsaka Rep., 41). Odell *v.* Godfrey (11 Pac. Rep., 190). Galbraith *v.* Barnard (26 Pac. Rep., 1110). Brown *v.* Jessup (24 Pac. Rep., 232). Hughes *v.* Clemons (42 Pac. Rep., 617). Lewis & Dryden Print Co. *v.* Reeds (38 Pac. Rep., 622). Whipple *v.* S. P. Co. (55 Pac. Rep., 975). Allen *v.* Byerly (48 Pac. Rep., 474). Ream *v.* Howard (24 Pac Rep., 913). Hennes *v.* Wells (19 Pac. Rep., 121). Byers *v.* Cook (10 Pac. Rep., 417). Hosford *v.* Logus (11 Pac. Rep., 900). Williams *v.* Schmidt (13 Pac. Rep., 305). Heiney *v.* Heiney (73 Pac. Rep., 1038). State *v.* Connolly (90 Pac. Rep., 902). Ferrari *v.* Beaver Hill Coal Co. (95 Pac. Rep., 498).

NOTE.—And see cases cited under sec. 2551, chap. 43, Title XV, Code Criminal Procedure.

For service by mail see secs. 1328, 1330, chap. 50, of this title.

Undertaking, when to stay proceedings.

SEC. 1830. The undertaking of the appellant must be given, with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal; but such undertaking does not stay the proceedings unless the undertaking further provides to the effect following, that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal.

Carter Code, sec. 998; Charlton Code, sec. 998.

Drouilhat *v.* Rottner (11 Pac. Rep., 221). Heiney *v.* Heiney (73 Pac. Rep., 1038).

When proceedings stayed by undertaking for costs.

SEC. 1831. If the judgment appealed from be in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

Carter Code, sec. 999; Charlton Code, sec. 999.

Allowance of appeal and return of execution.

SEC. 1832. When an appeal is taken the justice must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not. When the proceedings are stayed, if an execution has been issued to enforce the judgment, the justice

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must recall the same by written notice to the officer holding the execution, and thereupon it must be returned and all property taken thereon and not sold released; and if the body of the defendant has been taken on execution he must be discharged from custody.

Carter Code, sec. 1000; Charlton Code, sec. 1000.

Jacobs *v.* Oren (48 Pac. Rep., 431). | Lung *v.* Sharp (5 Or. Rep., 442).
State *v.* Zingsen (7 Or. Rep., 139). |

Qualifications and justification of sureties.

SEC. 1833. All sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest; and if required by the adverse party, must justify before the justice in like manner.

Carter Code, sec. 1001; Charlton Code, sec. 1001.

Brown *v.* Jessup (24 Pac. Rep., 232). | Jacobs *v.* Oren (48 Pac. Rep., 431).
Starks *v.* Stafford (12 Pac. Rep., 670). |

NOTE.—See secs. 941, 942, chap. 12, of this title.

Transcript, when filed and what constitutes.

SEC. 1834. Within twenty days after the allowance of the appeal the appellant must file with the clerk of the district court a transcript of the cause. The transcript must contain a copy of all the material entries in the justice's docket relating to the cause or the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the justice.

Carter Code, sec. 1002; Charlton Code, sec. 1002.

Hughs *v.* Clemons (42 Pac. Rep., 617). Jacobs *v.* Oren (48 Pac. Rep., 431). Carter *v.* Monastes (25 Pac. Rep., 29). Troy *v.* Hallgarth (57 Pac. | Rep., 374). Steel *v.* Rees (11 Pac. Rep., 68). Forbis *v.* Inman (31 Pac. Rep., 204). Feller *v.* Feller (66 Pac. Rep., 468).

Appeal, how perfected and tried.

SEC. 1835. Upon the filing of the transcript with the clerk of the district court the appeal is perfected, and the action shall be deemed pending and for trial therein as if originally commenced in such court, and the district court shall proceed to hear, try, and determine the same anew, without regarding any error or other imperfection in the original summons and the service thereof, or on the trial, judgment, or other proceeding of the justice or marshal in relation to the cause.

Carter Code, sec. 1003; Charlton Code, sec. 1003.

Ferguson *v.* Reiger (73 Pac. Rep., 1040). Hager *v.* Knapp (78 Pac. Rep., 671). Byers *v.* Ferguson (68 Pac. Rep., 5). Harvey *v.* S. P. Co. (80 | Pac. Rep., 1061). Woods *v.* Ore. S. L. & R. Co. (81 Pac. Rep., 235). Shaw *v.* Hemphill (86 Pac. Rep., 273).

Dismissal of appeal.

SEC. 1836. The district court, on motion of the respondent may, at any time before the action is called for trial, dismiss the appeal, if it satisfactorily appear that the transcript and original papers annexed are incomplete in any material particular, unless upon the cross motion of the appellant it makes a rule upon the justice to supply such omission, upon such terms against the appellant as may be just. At any time before the trial the court may dismiss the appeal upon the motion of the appellant.

Carter Code, sec. 1004; Charlton Code, sec. 1004.

Hager *v.* Knapp (78 Pac. Rep., 671). | State *v.* Connolley (90 Pac. Rep., 902).
Helney *v.* Helney (73 Pac. Rep., 1038). | Byers *v.* Cook (10 Pac. Rep., 417).

Judgment in the appellate court.

SEC. 1837. When an appeal is dismissed the district court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and

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effect of it. If the appellant fail to file such transcript within the time required, the adverse party may file a transcript of the judgment of the justice, and the notice and undertaking on appeal, which, on demand, the justice shall deliver to him for that purpose, and thereupon have such appeal dismissed and judgment against the appellant and his sureties as provided in this section.

Carter Code, sec. 1005; Charlton Code, sec. 1005.

Whipple *v.* S. P. Co. (55 Pac. Rep., 975). Long *v.* Sharp (5 Or. Rep., 439). State *v.* Shepard (16 Pac. Rep., 483).

Defective undertaking, how cured.

SEC. 1838. An appeal can not be dismissed on the motion of the respondent, on account of the undertaking therefor being defective, if the appellant, before the determination of the motion to dismiss, will execute a sufficient undertaking, and file the same in the appellate court, upon such terms as may be deemed just.

Carter Code, sec. 1006; Charlton Code, sec. 1006.

Gobbi *v.* Refrano (52 Pac. Rep., 761). Hosford *v.* Logus (11 Pac. Rep., 900). State *v.* Sheppard (16 Pac. Rep., 483). Heiney *v.* Heiney (73 Pac. Rep., 1038).

Amendment of pleadings in the appellate court.

SEC. 1839. In all cases of appeal the bill of items of the account sued on, or filed as a counterclaim or set-off, or the abatement of the plaintiff's cause of action, or of the defendant's counterclaim or set-off, or other ground of defense filed before the justice, may be amended upon appeal in the appellate court to supply any defect, deficiency, or omission therein, by filing formal pleadings therein when by such amendment substantial justice will be promoted; and in all cases when required by the court, or by either party to the action, formal pleadings shall be filed on either side upon the trial of the cause on appeal; when either party requires such formal pleadings, he shall cause to be served on the opposite party a notice thereof in writing, and file the same in the court where the cause is pending by the first day of the term of such court at which such cause is to be tried; but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment.

Carter Code, sec. 1007; Charlton Code, sec. 1007.

Forbis *v.* Inman (31 Pac. Rep., 204). Waggy *v.* Scott (45 Pac. Rep., 774). Munro *v.* N. P. Coal Co. (5 Or. Rep., 510). State *v.* Jones (23 Pac. Rep., 840). Dickson *v.* Johnson (74 Pac. Rep., 394). Curry *v.* S. P. Co. (28 Pac. Rep., 884). Mosier *v.* Jenkins (5 Or. Rep., 450). Meyer *v.* Edwards (48 Pac. Rep., 696). Kirk *v.* Matlock (7 Pac. Rep., 322). Adams *v.* Kirby (74 Pac. Rep., 399).

## CHAPTER NINETY-EIGHT.

### OF MISCELLANEOUS PROVISIONS RELATING TO JUSTICE'S COURT.


Sec.
1840. Judgment of justices may be reviewed.
1841. Appeals, where jury is demanded.
1842. Who may act as attorney.
1843. Special deputies.
1844. Party entitled to one hour.
1845. Proceedings for contempt.
1846. Punishment for contempt.


June 6, 1900.
31 Stat. L., 488–489.
Judgment of justices may be reviewed.

SEC. 1840. No provision of this code in relation to appeals or the right of appeal must be construed so as to prevent either party to a judgment given in a justice's court from having the same reviewed in the district court for errors in law appearing upon the face of

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such judgment or the proceedings connected therewith, as provided in chapter fifty-five.

Carter Code, sec. 1008; Charlton Code, sec. 1008.

Moore *v.* Rennick (1 Alaska Rep., 173). Gibson *v.* Langdon (2 Alaska Rep., 166). Ramsey *v.* Pettingill (12 Pac. Rep., 439). Gaunt *v.* Perkins (8 Or. Rep., 354). McAnish *v.* Grant (74 Pac. Rep., 396). Ferguson *v.* Beyers (67 Pac. Rep., 1115). Long *v.* Sharp (5 Or. Rep., 442).

Appeals, where jury is demanded.

SEC. 1841. No appeal can be taken, by the party who demanded a jury, from a judgment in a justice's court given upon the verdict of such jury, unless the judgment be for an amount of money not less than fifty dollars or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs and disbursements in either case.

Carter Code, sec. 1009; Charlton Code, sec. 1009.

State *v.* Sheppard (16 Pac. Rep., 483).

Who may act as attorney.

SEC. 1842. Any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding other than a subpœna.

Carter Code, sec. 1010; Charlton Code, sec. 1010.

NOTE.—See sec. 1541; chap. 70, of this title.

Special deputies.

SEC. 1843. Whenever it appears to the justice that any process or order authorized to be issued or made by this code will not be served for want of an officer, such justice may appoint any suitable person, not being a party to the action, to serve the same; such an appointment may be made by an indorsement on the process or order, in substantially the following form, and signed by the justice with his name of office: "I hereby appoint A B to serve the within process, or order," as the case may be.

Carter Code, sec. 1011; Charlton Code, sec. 1011.

N. P. Cycle Co. *v.* Thomas (38 Pac. Rep., 397).

Party entitled to one hour.

SEC. 1844. A party is entitled to one hour in which to make his appearance after the time specified in the summons, and not otherwise; and if the justice be then actually engaged in other official business he may, on his own motion, postpone further proceedings in the case until such official business has been completed or he can be disengaged therefrom.

Carter Code, sec. 1012; Charlton Code, sec. 1012.

Everton *v.* Smith (1 Alaska Rep., 423, 425). Gaunt *v.* Perkins (8 Or. Rep., 354).

Proceedings for contempt.

SEC. 1845. Chapter fifty-eight of this title, defining contempts, and the proceeding for punishing a party guilty of contempt, shall apply to justices' courts, except as in this chapter otherwise specially provided.

Carter Code, sec. 1013; Charlton Code, sec. 1013.

U. S. *v.* Pratt (3 Alaska Rep., 415).

Punishment for contempt.

SEC. 1846. The punishment for a contempt in a justice's court shall be by fine or imprisonment, or both; but the fine shall in no case exceed twenty-five dollars, nor the imprisonment ten days.

Carter Code, sec. 1014; Charlton Code, sec. 1014.

U. S. *v.* Pratt (3 Alaska Rep., 415).

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# CHAPTER NINETY-NINE.

## OF FORCIBLE ENTRY AND DETAINER.

Sec.
1847. When entry upon real property allowed; not to be made with force.
1848. Action to recover possession of premises forcibly entered or held by force.
1849. Necessary averments and complaint.
1850. Action for, how conducted.
1851. Summons in, how served and returned.
1852. Continuance, for what time granted.
1853. Action for, trial by commissioner.
1854. Verdict of jury and judgment on.
1855. Form of execution.
1856. Appeal by defendant.
1857. Unlawful holding by force, what deemed to be.
1858. Notice to quit must be in writing; service of.
1859. Notice to quit, how long served before action brought.
1860. Action can not be maintained before expiration of period for which rent paid.
1861. Crops sown, etc., before lease expires, tenant may cultivate and harvest.
1862. Merits of title not to be questioned in action; limitation of action.
1863. Notice to quit in action under Code of Civil Procedure.
1864. Precinct defined.

NOTE.—For construction of statute, see note on construction of statutes at the beginning of Title XII, Civil Code.

June 6, 1900.
31 Stat. L., 489-491.

When entry upon real property allowed; not to be made with force.

SEC. 1847. No person shall enter upon any land, tenement, or other real property, but in cases where entry is given by law; and in such cases the entry shall not be made with force, but only in a peaceable manner.

Carter Code, sec. 1015; Charlton Code, sec. 1015.

Steil *v.* Dessmore (3 Alaska Rep., 395). Sommer v. Compton (96 Pac. Rep., 124).

Action to recover possession of premises forcibly entered or held by force.

SEC. 1848. When a forcible entry shall be made upon any premises, or when an entry shall be made in a peaceable manner and the possession shall be held by force, the person entitled to the premises may maintain an action to recover the possession thereof before the commissioner of the precinct in which such real property is situated.

Carter Code, sec. 1016; Charlton Code, sec. 1016.

Steil *v.* Dessmore (3 Alaska Rep., 395, 398). Taylor *v.* Scott (10 Or. Rep., 484). Hislop *v.* Moldenhauer (27 Pac. Rep., 1052). Harrington *v.* Watson (3 Pac. Rep., 173). Twiss *v.* Boehmer (65 Pac. Rep., 18). Smith *v.* Reeder (28 Pac. Rep., 890). Thompson *v.* Wolf (6 Or. Rep., 308). Aiken *v.* Aiken (6 Pac. Rep., 682). McAnish *v.* Grant (74 Pac. Rep., 396). Heiney *v.* Heiney (73 Pac. Rep., 1088). Wolfer *v.* Hurst (82 Pac. Rep., 20). Burns *v.* Kennedy (90 Pac. Rep., 1102). Zelig *v.* Blue Point Oyster Co. (104 Pac. Rep., 193).

Necessary averments and complaint.

SEC. 1849. In such action it shall be sufficient to state in the complaint a description of the premises with convenient certainty, that the defendant is in possession thereof, that he entered upon the same with force, or unlawfully holds the same with force, as the case may be, and that the plaintiff is entitled to the possession thereof.

Carter Code, sec. 1017; Charlton Code, sec. 1017.

Chung Yow *v.* Hop Chung (4 Pac. Rep., 326). Heiney *v.* Heiney (73 Pac. Rep., 1038). Wolfer *v.* Hurst (82 Pac. Rep., 20).

Action for, how conducted.

SEC. 1850. Such action, except as hereinafter especially provided, shall be conducted in all respects as other actions before commissioners.

Carter Code, sec. 1018; Charlton Code, sec. 1018.

Dechenbach *v.* Rima (77 Pac. Rep., 391). McAnish *v.* Grant (74 Pac. Rep., 396). Zelig *v.* Blue Point Oyster Co. (104 Pac. Rep., 193).

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Summons in, how served and returned.

SEC. 1851. The summons shall be served and returned as in other cases; such service shall be not less than two nor more than four days before the day of trial appointed by the commissioner.

Carter Code, sec. 1019; Charlton Code, sec. 1019.

Belfils *v.* Flint (14 Pac. Rep., 295). | Wolfer *v.* Hurst (82 Pac. Rep., 20).

Continuance, for what time granted.

SEC. 1852. No continuance shall be granted for a longer period than two days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient security, to be approved by the commissioner, conditioned for the payment of the rent that may accrue if judgment be rendered against the defendant.

Carter Code, sec. 1020; Charlton Code, sec. 1020.

Action for, trial by commissioner.

SEC. 1853. If the action be tried by the commissioner without a jury, and after hearing the evidence he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, or if judgment be rendered by default, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of action; if he find the complaint true in part, he shall render judgment for the restitution of such part only, and the costs shall be taxed as the commissioner shall deem just and equitable.

Carter Code, sec. 1021; Charlton Code, sec. 1021.

Verdict of jury and judgment on.

SEC. 1854. If the action be tried by a jury, and they shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find; and the commissioner shall render judgment according to the verdict.

Carter Code, sec. 1022; Charlton Code, sec. 1022.

Altree *v.* Moore (1 Or. Rep., 350).

Form of execution.

SEC. 1855. The execution, should judgment of restitution be rendered, may be in the following form:

DISTRICT OF ALASKA.

To the marshal of said District:

Whereas a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following-described premises, to wit: ———, lately tried before me, wherein ——— was plaintiff and ——— was defendant, judgment was rendered on the —— day of ———, anno Domini ———, that the plaintiff, ———, have restitution of said premises; and also that he recover costs in the sum of ———. In the name of the United States you are therefore hereby commanded to cause the defendant to be forthwith removed from said premises, said plaintiff to have restitution of the same; also, that you levy of the goods and chattels of said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return.

Witness my hand this —— day of ———, anno Domini ———.

———— ————,
Commissioner.

Carter Code, sec. 1023; Charlton Code, sec. 1023.

Appeal by defendant.

SEC. 1856. If judgment be rendered against the defendant for the restitution of the real property described in the complaint or any part thereof, no appeal shall be taken by the defendant from such judgment until he shall, in addition to the undertaking now required by law upon appeal, give an undertaking to the adverse party, with

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two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of such judgment until final judgment in the action, if such judgment shall be affirmed upon appeal.

Carter Code, sec. 1024; Charlton Code, sec. 1024.

Danvers *v.* Durken (12 Pac. Rep., 60). Heiney *v.* Heiney (73 Pac. Rep., 1038). Dechenbach *v.* Rima (77 Pac. Rep., 391). Wolfer *v.* Hurst (80 Pac. Rep., 419). Zelig *v.* Blue Pt. Oyster Co. (104 Pac. Rep., 193).

Unlawful holding by force, what deemed to be.

SEC. 1857. The following shall be deemed cases of unlawful holding by force within the meaning of this chapter:

First. When the tenant or person in possession of any premises shall fail or refuse to pay any rent due on the lease or agreement under which he holds or deliver up the possession of the premises for ten days after demand made in writing for such possession;

Second. When, after a notice to quit as provided in this chapter, any person shall continue in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

Carter Code, sec. 1025; Charlton Code, sec. 1025.

Steil *v.* Dessmore (3 Alaska Rep., 399). Rosenblatt *v.* Perkins (22 Pac. Rep., 598). Smith *v.* Reeder 28 Pac. Rep., 890). Hislop *v.* Moldenhauer (27 Pac. Rep., 1052). Chung Yow *v.* Hop Chung (4 Pac. Rep., 326). Wolfer *v.* Hurst (82 Pac. Rep., 20). Farrett *v.* Clark (5 Or. Rep., 469).

Notice to quit must be in writing; service of.

SEC. 1858. A notice to quit must be in writing and must be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence therefrom.

Carter Code, sec. 1026; Charlton Code, sec. 1026.

Wolfer *v.* Hurst (82 Pac. Rep., 20). McClung *v.* McPherson (82 Pac. Rep., 13).

Notice to quit, how long served before action brought.

SEC. 1859. An action for the recovery of the possession of the premises may be maintained in the cases specified in subdivision second of section eighteen hundred and fifty-seven when the notice to quit has been served upon the tenant or person in possession for the period of ten days before the commencement thereof, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for the period of ninety days before commencement of such action.

Carter Code, sec. 1027; Charlton Code, sec. 1027.

Hislop *v.* Moldenhauer (31 Pac. Rep, 252). Neppach *v.* Jordan (14 Pac. Rep., 353). Heiney *v.* Heiney (73 Pac. Rep., 1038). Wolfer *v.* Hurst (82 Pac. Rep., 20).

Action can not be maintained before expiration of period for which rent paid.

SEC. 1860. The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises before the expiration of any period for which such tenant or person may have paid the rent of such premises in advance.

Carter Code, sec. 1028; Charlton Code, sec. 1028.

Crops sown, etc., before lease expires, tenant may cultivate and harvest.

SEC. 1861. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of such lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

Carter Code, sec. 1029; Charlton Code, sec. 1029.

Seivers *v.* Brown (56 Pac. Rep., 171; 45 L. R. A., 642).

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Merits of title not to be questioned in action; limitation of action.

SEC. 1862. In an action to recover the possession of any land, tenement, or other real property, where the entry is forcible or when the possession thereof is unlawfully held by force, the merits of the title shall not be inquired into, and three years' quiet possession of the premises immediately preceding the commencement of such action by the party in possession, or those under whom he holds, may be pleaded in bar thereof, unless the estate of such party in the premises is ended.

Carter Code, sec. 1030; Charlton Code, sec. 1030.

Stell *v.* Dessmore (3 Alaska Rep., 399). Shortess *v.* Wirt (1 Or. Rep., 90). Altree *v.* Moore (1 Or. Rep., 350). Thompson *v.* Wolff (6 Or. Rep., 311). Aiken *v.* Aiken (6 Pac. Rep., 682). Maloney *v.* Adsit (175 U. S. Rep., 290). Heiney *v.* Heiney (73 Pac. Rep., 1038).

Notice to quit in action under Code of Civil Procedure.

SEC. 1863. In any action to recover the possession of real property, as provided in chapter thirty-two of the Code of Civil Procedure, notice to quit, when necessary, may be given as prescribed in this chapter, and nothing in this chapter shall be construed so as to prevent such action being maintained for the recovery of the possession of real property, although the entry of the defendant be forcible or his holding unlawful and with force.

Carter Code, sec. 1031; Charlton Code, sec. 1031.

Chung Yow *v.* Hop Chung (4 Pac. Rep., 326).

Precinct defined.

SEC. 1864. That wherever the word "precinct" occurs in this act it shall be construed to mean the neighborhood in which the commissioner resides, as designated in the order of his appointment, unless where the court by special order, duly made and entered, definitely prescribes the limits of the precinct.

Carter Code, sec. 1032; Charlton Code, sec. 1032.

## CHAPTER ONE HUNDRED.

### OF WITNESSES, INSPECTION AND PROOF OF RECORDS AND OF PRIVATE SEALS.


Sec.
1865. Competent witnesses.
1866. Incompetent witnesses.
1867. Competency of husband and wife.
1868. Competency of attorney.
1869. Competency of clergyman.
1870. Competency of physician.
1871. Inspection of public records.
1872. Proof of public records.
1873. Private seals abolished.
1874. Title by adverse possession.


June 6, 1900.
31 Stat. L., 492.
Competent witnesses.

SEC. 1865. Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question, according to the rules of the common law.

Carter Code, sec. 1033; Charlton Code, sec. 1033.

Tla-koo-yel-lee *v.* U. S. (167 U. S. Rep., 274; 1 Alaska Rep., 741). Corbus *v.* Leonard (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 711). State *v.* Jackson (9 Or. Rep., 457). Roberts *v.* Parrish (22 Pac. Rep., 136). Jacobson *v.* Siddal (7 Pac. Rep., 108). State *v.* Magone (51 Pac. Rep., 453). State *v.* Lem Noon (107 Pac. Rep., 974).

Incompetent witnesses.

SEC. 1866. The following persons shall not be witnesses: 1. Those of unsound mind at the time of the transaction and of their production for examination. 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Carter Code, sec. 1034; Charlton Code, sec. 1034.

State *v.* Jackson (9 Or. Rep., 457). Grubbe *v.* Grubbe (38 Pac. Rep., 182). Hearn *v.* Louttit (72 Pac. Rep., 132).

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Competency of husband and wife.

SEC. 1867. A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards be, without the consent of the other, examined as to any communications made by one to the other during marriage, but the exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Carter Code, sec. 1035; Charlton Code, sec. 1035.

Bird *v.* U. S. (23 Sup. Ct. Rep., 42; 1 Alaska Rep., 838). Fowler *v.* Phoenix Ins. Co. (57 Pac. Rep., 421). State *v.* McGrath (57 Pac. Rep., 327). | Long *v.* Landers (10 Or. Rep., 175). State *v.* Leasia (78 Pac. Rep., 328). State *v.* Luper (91 Pac. Rep., 444; 95 Pac. Rep., 811).

Competency of attorney.

SEC. 1868. An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, or his advice given thereon, in the course of his professional employment.

Carter Code, sec. 1036; Charlton Code, sec. 1036.

Minard *v.* Stillman (49 Pac. Rep., 976). | State *v.* Gleason (23 Pac. Rep., 817).

Competency of clergyman.

SEC. 1869. A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

Carter Code, sec. 1037; Charlton Code, sec. 1037.

Estate of Toomes (54 Pac. Rep., 509).

Competency of physician.

SEC. 1870. A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

Carter Code, sec. 1038; Charlton Code, sec. 1038.

Kelly *v.* Highfield (14 Pac. Rep., 744).

Inspection of public records.

SEC. 1871. Every person has a right to inspect any public writing or record in said District, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.

Carter Code, sec. 1039; Charlton Code, sec. 1039.

Proof of public records.

SEC. 1872. A judicial, legislative, or executive record of said District, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such person affixed thereto, if it or he have a seal, or otherwise authenticated as required by sections nine hundred and five, nine hundred and six, and nine hundred and seven of the Revised Statutes of the United States.

Carter Code, sec. 1040; Charlton Code, sec. 1040.

Boswick *v.* Miller (26 Pac. Rep., 861). Hill *v.* Cooper (6 Or. Rep., 189). Jones *v.* Dove (6 Or. Rep., 191). State *v.* Kalyton (45 Pac. Rep., 756). Goddard *v.* Parker (10 Or. Rep., 102). | Keyes *v.* Mooney (9 Pac. Rep., 400). In re Clayson's Will (34 Pac. Rep., 358). State *v.* Gray (70 Pac. Rep., 904; 71 Pac. Rep., 978). First Nat. Bank *v.* Miller (87 Pac. Rep., 892).

Private seals abolished.

SEC. 1873. Private seals and scrolls as a substitute therefor are abolished and are not required to any instrument, but the effect thereof, when used, shall remain unchanged.

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Carter Code, sec. 1041; Charlton Code, sec. 1041.

Taylor *v.* Fleckenstein (30 Fed. Rep., 100). Rector of St. Davids *v.* Woods (34 Pac. Rep., 18). Pendleton *v.* Saunders (24 Pac. Rep., 506). Johnston *v.* Wadsworth (34 Pac. Rep., 13). Osburn *v.* Hubbard (25 Pac. Rep., 1021). Dickey *v.* Jackson (84 Pac. Rep., 701).

Title by adverse possession.

SEC. 1874. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more shall be conclusively presumed to give title thereto except as against the United States.

Carter Code, sec. 1042; Charlton Code, sec. 1042.

Tyee Consol. Min. Co. *v.* Langstedt (1 Alaska Rep., 457). McGrath *v.* Valentine (167 Fed. Rep., 473; 93 C. C. A., 109).

## CHAPTER ONE HUNDRED AND ONE.

### OF INDISPENSABLE EVIDENCE.


Sec.
1875. Sale or transfer of personal property.
1876. Agreement not in writing, when void.
1877. As to representations concerning third persons.
1878. Sale or transfer of real property.
1879. When last section not to affect certain cases.
1880. Sale or transfer of boat or vessel.


June 6, 1900.
31 Stat. L., 493, 494.
Sale or transfer of personal property.

SEC. 1875. Every sale or assignment of personal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration, during the time such property remains in the possession of said vendor or assignor.

Carter Code, sec. 1043; Charlton Code, sec. 1043.

NOTE.—See chaps. 13 and 31 of the Civil Code.

Agreement not in writing, when void.

SEC. 1876. In the following cases an agreement is void unless the same or some note or memorandum thereof expressing the consideration be in writing and subscribed by the party to be charged or by his lawfully authorized agent:

(1) An agreement that by its terms is not to be performed within a year from the making thereof;

(2) An agreement to answer for the debt, default, or miscarriage of another;

(3) An agreement by an executor or administrator to pay the debts of his testator or intestate out of his own estate;

(4) An agreement made upon consideration of marriage, other than a mutual promise to marry;

(5) An agreement for the sale of personal property at a price not less than fifty dollars, unless the buyer accept and receive some part of such personal property, or pay at the time some part of the purchase price; but when the sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the property sold, the terms of the sale, the price, and the names of the purchaser and person for whose account the sale is made, is a sufficient memorandum.

(6) An agreement for leasing for a longer period than one year, or for the sale of real property, or of any interest therein, or to charge or encumber the same.

(7) An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing.

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Carter Code, sec. 1044; Charlton Code, sec. 1044.

Cascaden *v.* Dunbar (2 Alaska Rep., 412). N. A. T. & T. Co. *v.* Samuels (146 Fed. Rep., 48). Cascaden *v.* Dunbar (157 Fed. Rep., 62). Ready *v.* Smith (95 Pac. Rep., 817). Catterlin *v.* Bush (65 Pac. Rep., 1004). Rose *v.* Wollenburg (44 Pac. Rep., 382, 39 L. R. A., 378). Johnson *v.* Wadsworth (34 Pac. Rep., 13). Reid *v.* Alaska Packing Assn. (73 Pac. Rep., 337). McLeod *v.* Despain (92 Pac. Rep., 1082). Kollock *v.* Bennett (100 Pac. Rep., 941).

*Subdivision 1*: Denn *v.* Peters (59 Pac. Rep., 1109). Southwell *v.* Beasley (5 Or. Rep., 458). Hedges *v.* Strong (3 Or. Rep., 18). White *v.* Holland (3 Pac. Rep., 573). Rosenblatt *v.* Perkins (22 Pac. Rep., 598). Keller *v.* Bley (15 Pac. Rep., 705). Dechenbach *v.* Rima (78 Pac. Rep., 666).

*Subdivision 2*: Gump *v.* Halberstadt (15 Pac. Rep., 467). Miller *v.* Lynch (19 Pac. Rep., 845). Bixby *v.* Church (42 Pac. Rep., 613). Allen *v.* Leavens (37 Pac. Rep., 488, 26 L. R. A., 620). Feldman *v.* McGuire (55 Pac. Rep., 872). Mackey *v.* Smith (28 Pac. Rep., 974). Rose *v.* Wollenburg (44 Pac. Rep., 382, 39 L. R. A., 378). Paddock *v.* Hume (6 Or. Rep., 86). Taylor *v.* Fleckenstein (30 Fed. Rep., 103). Holley *v.* Dawson (18 Pac. Rep., 592). Mannary *v.* Runyan (73 Pac. Rep., 1038). Kiernan *v.* Kratz (69 Pac. Rep., 1027). Peterson *v.* Creason (81 Pac. Rep., 574). Davis *v.* Brigham (107 Pac. Rep., 961).

*Subdivision 4*: Adams *v.* Adams (20 Pac. Rep., 638).

*Subdivision 5*: N. A. T. & T. Co. *v.* Samuels (146 Fed. Rep., 48). Duzan *v.* Meserve (34 Pac. Rep., 548). Myer *v.* Thompson (18 Pac. Rep., 16). Galvin *v.* McKenzie (27 Pac. Rep., 1039). Milos *v.* Covacvich (66 Pac. Rep., 914). Wadhams *v.* Balfour (51 Pac. Rep., 642). Heintz *v.* Burghardt (43 Pac. Rep., 866; 31 L. R. A., 608). Reid *v.* Alaska Pkg. Assn. (73 Pac. Rep., 337).

*Subdivision 6*: Cascaden *v.* Dunbar (2 Alaska Rep., 408). Montgomery *v.* Walback (2 Alaska Rep., 581). Runner *v.* Woitke (2 Alaska Rep., 392). Wallace *v.* Scroggins (21 Pac. Rep., 558). Rosenblatt *v.* Perkins (22 Pac. Rep., 598). Foss *v.* Newberry (25 Pac. Rep., 669). Leonards *v.* Hendricks (4 Pac. Rep., 515). Stubblefield *v.* Imbler (54 Pac. Rep., 198). Watson *v.* Brooks (13 Fed. Rep., 541). Dechenbach *v.* Rima (78 Pac. Rep., 666). Tucker *v.* S. Ottenheimer Estate (81 Pac. Rep., 360). Bull *v.* Payne (84 Pac. Rep., 697). Henry Jenning & Son *v.* Miller (85 Pac. Rep., 517). West *v.* Washington & C. R. Co. (90 Pac. Rep., 666). Bogard *v.* Barham (108 Pac. Rep., 214).

*Subdivision 7*: Runner *v.* Woitke (2 Alaska Rep., 392). Hughs *v.* Lansing (55 Pac. Rep., 95). Chick *v.* Bridges (107 Pac. Rep., 478).

As to representations concerning third persons.

SEC. 1877. No evidence is admissible to charge a person upon a representation as to the credit, skill, or character of a third person unless such representation or some memorandum thereof be in writing, and either subscribed by or in the handwriting of the party to be charged.

Carter Code, sec. 1045; Charlton Code, sec. 1045.

Nevada Bank *v.* Port Nat. Bank (59 Fed. Rep., 339).

Sale or transfer of real property.

SEC. 1878. No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

Carter Code, sec. 1046; Charlton Code, sec. 1046.

Lewis *v.* Wells (85 Fed. Rep., 896; 1 Alaska Rep., 833). Runner *v.* Woitke (2 Alaska Rep., 392). Cascaden *v.* Dunbar (2 Alaska Rep., 412). Shea *v.* Nilima (133 Fed. Rep., 209; 66 C. C. A., 263; 2 Alaska Rep., 705). Copper River Min. Co. *v.* McClellan (2 Alaska Rep., 134). Williams *v.* Jualpa Co. (3 Alaska Rep., 225). Halla *v.* Cowden (170 Fed. Rep., 559). Cooper *v.* Thomason (45 Pac. Rep., 296). Barger *v.* Barger (47 Pac. Rep., 702). Doddson *v.* Doddson (37 Pac. Rep., 542). Parrish *v.* Parrish (54 Pac. Rep., 352). Richmond *v.* Bloch (60 Pac. Rep., 385). McBroon *v.* Thompson (58 Pac. Rep., 524). Bowman *v.* Bowman (57 Pac. Rep., 546). Lavery *v.* Arnold (57 Pac. Rep., 906). Ewing *v.* Rhea (62 Pac. Rep., 790). Feldman *v.* McGuire (55 Pac. Rep., 872). Flower *v.* Barnekoff (25 Pac. Rep., 370; 11 L. R. A., 149). Fisk *v.* Hennarie (9 Pac. Rep., 322). Chenoweth *v.* Lewis (9 Or. Rep., 150). Pugh *v.* Spicknall (74 Pac. Rep., 485). Dechenbach *v.* Rima (78 Pac. Rep., 666). Roberts *v.* Templeton (80 Pac. Rep., 481). Jackson *v.* Stearns (84 Pac. Rep., 798). Bogard *v.* Barham (96 Pac. Rep., 673).

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When last section not to affect certain cases.

SEC. 1879. The last section shall not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel specific performance of an agreement in relation to such property.

Carter Code, sec. 1047; Charlton Code, sec. 1047.

Williams *v.* Jualpa Co. (3 Alaska Rep., 226). Plymale *v.* Comstock (9 Or. Rep., 321). Wagonblast *v.* Whitney (6 Pac. Rep., 399). Richardson *v.* Orth (66 Pac. Rep., 926). Stone *v.* Ladd (67 Pac. Rep., 413). Kelly *v.* Ruble (4 Pac. Rep., 593). O'Dell *v.* Morin (5 Or. Rep., 96). Brown *v.* Lord (7 Or. Rep., 302). Sanford *v.* Wheelan (7 Pac. Rep., 324). Barrett *v.* Schleich (62 Pac. Rep., 792). Wallace *v.* Scoggins (21 Pac. Rep., 558). Adams *v.* Adams (20 Pac. Rep., 638). Krowl *v.* Coach (78 Pac. Rep., 597). De Roboarn *v.* Schmidtlin (93 Pac. Rep., 696).

NOTE. See cases cited under sec. 1878.

Sale or transfer of boat or vessel.

SEC. 1880. A sale or transfer of a boat or vessel is not valid unless it be in writing and signed by the party making the transfer.

Carter Code, sec. 1048; Charlton Code, sec. 1048.

Yarnberg *v.* Watson (4 Pac. Rep., 296).

## COMPARATIVE TABLE OF SECTIONS, CIVIL CODE OF PROCEDURE.

["Old" refers to Carter's compilation and Charlton's compilation, "new" refers to this compilation.]

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| 5 | 5 | 837 | 44 | 44 | 876 |
| 6 | 6 | 838 | 45 | 45 | 877 |
| 7 | 7 | 839 | 46 | 46 | 878 |
| 8 | 8 | 840 | 47 | 47 | 879 |
| 9 | 9 | 841 | 48 | 48 | 880 |
| 10 | 10 | 842 | 49 | 49 | 881 |
| 11 | 11 | 843 | 50 | 50 | 882 |
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| 13 | 13 | 845 | 52 | 52 | 884 |
| 14 | 14 | 846 | 53 | 53 | 885 |
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| 16 | 16 | 848 | 55 | 55 | 887 |
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| 18 | 18 | 850 | 57 | 57 | 889 |
| 19 | 19 | 851 | 58 | 58 | 890 |
| 20 | 20 | 852 | 59 | 59 | 891 |
| 21 | 21 | 853 | 60 | 60 | 892 |
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| 23 | 23 | 855 | 62 | 62 | 894 |
| 24 | 24 | 856 | 63 | 63 | 895 |
| 25 | 25 | 857 | 64 | 64 | 896 |
| 26 | 26 | 858 | 65 | 65 | 897 |
| 27 | 27 | 859 | 66 | 66 | 898 |
| 28 | 28 | 860 | 67 | 67 | 899 |
| 29 | 29 | 861 | 68 | 68 | 900 |
| 30 | 30 | 862 | 69 | 69 | 901 |
| 31 | 31 | 863 | 70 | 70 | 902 |
| 32 | 32 | 864 | 71 | 71 | 903 |
| 33 | 33 | 865 | 72 | 72 | 904 |
| 34 | 34 | 866 | 73 | 73 | 905 |
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| 84 | 84 | 916 | 153 | 153 | 985 |
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| 87 | 87 | 919 | 156 | 156 | 988 |
| 88 | 88 | 920 | 157 | 157 | 989 |
| 89 | 89 | 921 | 158 | 158 | 990 |
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| 91 | 91 | 923 | 160 | 160 | 992 |
| 92 | 92 | 924 | 161 | 161 | 993 |
| 93 | 93 | 925 | 162 | 162 | 994 |
| 94 | 94 | 926 | 163 | 163 | 995 |
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| 96 | 96 | 928 | 165 | 165 | 997 |
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| 99 | 99 | 931 | 168 | 168 | 1000 |
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| 119 | 119 | 951 | 188 | 188 | 1020 |
| 120 | 120 | 952 | 189 | 189 | 1021 |
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| 139 | 139 | 971 | 208 | 208 | 1040 |
| 140 | 140 | 972 | 209 | 209 | 1041 |
| 141 | 141 | 973 | 210 | 210 | 1042 |
| 142 | 142 | 974 | 211 | 211 | 1043 |
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| 223 | 223 | 1055 | 291 | 291 | 1123 |
| 224 | 224 | 1056 | 292 | 292 | 1124 |
| 225 | 225 | 1057 | 293 | 293 | 1125 |
| 226 | 226 | 1058 | 294 | 294 | 1126 |
| 227 | 227 | 1059 | 295 | 295 | 1127 |
| 228 | 228 | 1060 | 296 | 296 | 1128 |
| 229 | 229 | 1061 | 297 | 297 | 1129 |
| 230 | 230 | 1062 | 298 | 298 | 1130 |
| 231 | 231 | 1063 | 299 | 299 | 1131 |
| 232 | 232 | 1064 | 300 | 300 | 1132 |
| 233 | 233 | 1065 | 301 | 301 | 1133 |
| 234 | 234 | 1066 | 302 | 302 | 1134 |
| 235 | 235 | 1067 | 303 | 303 | 1135 |
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| 239 | 239 | 1071 | 307 | 307 | 1139 |
| 240 | 240 | 1072 | 308 | 308 | 1140 |
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| 243 | 243 | 1075 | 311 | 311 | 1143 |
| 244 | 244 | 1076 | 312 | 312 | 1144 |
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| 246 | 246 | 1078 | 314 | 314 | 1146 |
| 247 | 247 | 1079 | 315 | 315 | 1147 |
| 248 | 248 | 1080 | 316 | 316 | 1148 |
| 249 | 249 | 1081 | 317 | 317 | 1149 |
| 250 | 250 | 1082 | 318 | 318 | 1150 |
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| 252 | 252 | 1084 | 320 | 320 | 1152 |
| 253 | 253 | 1085 | 321 | 321 | 1153 |
| 254 | 254 | 1086 | 322 | 322 | 1154 |
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| 257 | 257 | 1089 | 325 | 325 | 1157 |
| 258 | 258 | 1090 | 326 | 326 | 1158 |
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| 267 | 267 | 1099 | 335 | 335 | 1167 |
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| 269 | 269 | 1101 | 337 | 337 | 1169 |
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| 272 | 272 | 1104 | 340 | 340 | 1172 |
| 273 | 273 | 1105 | 341 | 341 | 1173 |
| 274 | 274 | 1106 | 342 | 342 | 1174 |
| 275 | 275 | 1107 | 343 | 343 | 1175 |
| 276 | 276 | 1108 | 344 | 344 | 1176 |
| 277 | 277 | 1109 | 345 | 345 | 1177 |
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| 280 | 280 | 1112 | 348 | 348 | 1180 |
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| 356 | 356 | 1188 | 424 | 424 | 1256 |
| 357 | 357 | 1189 | 425 | 425 | 1257 |
| 358 | 358 | 1190 | 426 | 426 | 1258 |
| 359 | 359 | 1191 | 427 | 427 | 1259 |
| 360 | 360 | 1192 | 428 | 428 | 1260 |
| 361 | 361 | 1193 | 429 | 429 | 1261 |
| 362 | 362 | 1194 | 430 | 430 | 1262 |
| 363 | 363 | 1195 | 431 | 431 | 1263 |
| 364 | 364 | 1196 | 432 | 432 | 1264 |
| 365 | 365 | 1197 | 433 | 433 | 1265 |
| 366 | 366 | 1198 | 434 | 434 | 1266 |
| 367 | 367 | 1199 | 435 | 435 | 1267 |
| 368 | 368 | 1200 | 436 | 436 | 1268 |
| 369 | 369 | 1201 | 437 | 437 | 1269 |
| 370 | 370 | 1202 | 438 | 438 | 1270 |
| 371 | 371 | 1203 | 439 | 439 | 1271 |
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| 373 | 373 | 1205 | 441 | 441 | 1273 |
| 374 | 374 | 1206 | 442 | 442 | 1274 |
| 375 | 375 | 1207 | 443 | 443 | 1275 |
| 376 | 376 | 1208 | 444 | 444 | 1276 |
| 377 | 377 | 1209 | 445 | 445 | 1277 |
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| 379 | 379 | 1211 | 447 | 447 | 1279 |
| 380 | 380 | 1212 | 448 | 448 | 1280 |
| 381 | 381 | 1213 | 449 | 449 | 1281 |
| 382 | 382 | 1214 | 450 | 450 | 1282 |
| 383 | 383 | 1215 | 451 | 451 | 1283 |
| 384 | 384 | 1216 | 452 | 452 | 1284 |
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| 386 | 386 | 1218 | 454 | 454 | 1286 |
| 387 | 387 | 1219 | 455 | 455 | 1287 |
| 388 | 388 | 1220 | 456 | 456 | 1288 |
| 389 | 389 | 1221 | 457 | 457 | 1289 |
| 390 | 390 | 1222 | 458 | 458 | 1290 |
| 391 | 391 | 1223 | 459 | 459 | 1291 |
| 392 | 392 | 1224 | 460 | 460 | 1292 |
| 393 | 393 | 1225 | 461 | 461 | 1293 |
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| 396 | 396 | 1228 | 464 | 464 | 1296 |
| 397 | 397 | 1229 | 465 | 465 | 1297 |
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| 404 | 404 | 1236 | 472 | 472 | 1304 |
| 405 | 405 | 1237 | 473 | 473 | 1305 |
| 406 | 406 | 1238 | 474 | 474 | 1306 |
| 407 | 407 | 1239 | 475 | 475 | 1307 |
| 408 | 408 | 1240 | 476 | 476 | 1308 |
| 409 | 409 | 1241 | 477 | 477 | 1309 |
| 410 | 410 | 1242 | 478 | 478 | 1310 |
| 411 | 411 | 1243 | 479 | 479 | 1311 |
| 412 | 412 | 1244 | 480 | 480 | 1312 |
| 413 | 413 | 1245 | 481 | 481 | 1313 |
| 414 | 414 | 1246 | 482 | 482 | 1314 |
| 415 | 415 | 1247 | 483 | 483 | 1315 |
| 416 | 416 | 1248 | 484 | 484 | 1316 |
| 417 | 417 | 1249 | 485 | 485 | 1317 |
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| 492 | 492 | 1324 | 557 | 557 | 1389 |
| 493 | 493 | 1325 | 558 | 558 | 1390 |
| 494 | 494 | 1326 | 559 | 559 | 1391 |
| 495 | 495 | 1327 | 560 | 560 | 1392 |
| 496 | 496 | 1328 | 561 | 561 | 1393 |
| 497 | 497 | 1329 | 562 | 562 | 1394 |
| 498 | 498 | 1330 | 563 | 563 | 1395 |
| 499 | 499 | 1331 | 564 | 564 | 1396 |
| 500 | 500 | 1332 | 565 | 565 | 1397 |
| 501 | 501 | 1333 | 566 | 566 | 1398 |
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| 509 | 509 | 1341 | 577 | 577 | 1409 |
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| 511 | 511 | 1343 | 579 | 579 | 1411 |
| 512 | 512 | 1344 | 580 | 580 | 1412 |
| 513 | 513 | 1345 | 581 | 581 | 1413 |
| 514 | 514 | 1346 | 582 | 582 | 1414 |
| 515 | 515 | 1347 | 583 | 583 | 1415 |
| 516 | 516 | 1348 | 584 | 584 | 1416 |
| 517 | 517 | 1349 | 585 | 585 | 1417 |
| 518 | 518 | 1350 | 586 | 586 | 1418 |
| 519 | 519 | 1351 | 587 | 587 | 1419 |
| 520 | 520 | 1352 | 588 | 588 | 1420 |
| 521 | 521 | 1353 | 589 | 589 | 1421 |
| 522 | 522 | 1354 | 590 | 590 | 1422 |
| 523 | 523 | 1355 | 591 | 591 | 1423 |
| 524 | 524 | 1356 | 592 | 592 | 1424 |
| 525 | 525 | 1357 | 593 | 593 | 1425 |
| 526 | 526 | 1358 | 594 | 594 | 1426 |
| 527 | 527 | 1359 | 595 | 595 | 1427 |
| 528 | 528 | 1360 | 596 | 596 | 1428 |
| 529 | 529 | 1361 | 597 | 597 | 1429 |
| 530 | 530 | 1362 | 598 | 598 | 1430 |
| 531 | 531 | 1363 | 599 | 599 | 1431 |
| 532 | 532 | 1364 | 600 | 600 | 1432 |
| 533 | 533 | 1365 | 601 | 601 | 1433 |
| 534 | 534 | 1366 | 602 | 602 | 1434 |
| 535 | 535 | 1367 | 603 | 603 | 1435 |
| 536 | 536 | 1368 | 604 | 604 | 1436 |
| 537 | 537 | 1369 | 605 | 605 | 1437 |
| 538 | 538 | 1370 | 606 | 606 | 1438 |
| 539 | 539 | 1371 | 607 | 607 | 1439 |
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| 541 | 541 | 1373 | 609 | 609 | 1441 |
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| 544 | 544 | 1376 | 612 | 612 | 1444 |
| 545 | 545 | 1377 | 613 | 613 | 1445 |
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| 547 | 547 | 1379 | 615 | 615 | 1447 |
| 548 | 548 | 1380 | 616 | 616 | 1448 |
| 549 | 549 | 1381 | 617 | 617 | 1449 |
| 550 | 550 | 1382 | 618 | 618 | 1450 |
| 551 | 551 | 1383 | 619 | 619 | 1451 |
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| 624 | 624 | 1456 | 692 | 692 | 1524 |
| 625 | 625 | 1457 | 693 | 693 | 1525 |
| 626 | 626 | 1458 | 694 | 694 | 1526 |
| 627 | 627 | 1459 | 695 | 695 | 1527 |
| 628 | 628 | 1460 | 696 | 696 | 1528 |
| 629 | 629 | 1461 | 697 | 697 | 1529 |
| 630 | 630 | 1462 | 698 | 698 | 1530 |
| 631 | 631 | 1463 | 699 | 699 | 1531 |
| 632 | 632 | 1464 | 700 | 700 | 1532 |
| 633 | 633 | 1465 | 701 | 701 | 1533 |
| 634 | 634 | 1466 | 702 | 702 | 1534 |
| 635 | 635 | 1467 | 703 | 703 | 1535 |
| 636 | 636 | 1468 | 704 | 704 | 1536 |
| 637 | 637 | 1469 | 705 | 705 | 1537 |
| 638 | 638 | 1470 | 706 | 706 | 1538 |
| 639 | 639 | 1471 | 707 | 707 | 1539 |
| 640 | 640 | 1472 | 708 | 708 | 1540 |
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| 642 | 642 | 1474 | 710 | 710 | 1542 |
| 643 | 643 | 1475 | 711 | 711 | 1543 |
| 644 | 644 | 1476 | 712 | 712 | 1544 |
| 645 | 645 | 1477 | 713 | 713 | 1545 |
| 646 | 646 | 1478 | 714 | 714 | 1546 |
| 647 | 647 | 1479 | 715 | 715 | 1547 |
| 648 | 648 | 1480 | 716 | 716 | 1548 |
| 649 | 649 | 1481 | 717 | 717 | 1549 |
| 650 | 650 | 1482 | 718 | 718 | 1550 |
| 651 | 651 | 1483 | 719 | 719 | 1551 |
| 652 | 652 | 1484 | 720 | 720 | 1552 |
| 653 | 653 | 1485 | 721 | 721 | 1553 |
| 654 | 654 | 1486 | 722 | 722 | 1554 |
| 655 | 655 | 1487 | 723 | 723 | 1555 |
| 656 | 656 | 1488 | 724 | 724 | 1556 |
| 657 | 657 | 1489 | 725 | 725 | 1557 |
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| 659 | 659 | 1491 | 727 | 727 | 1559 |
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| 663 | 663 | 1495 | 731 | 731 | 1563 |
| 664 | 664 | 1496 | 732 | 732 | 1564 |
| 665 | 665 | 1497 | 733 | 733 | 1565 |
| 666 | 666 | 1498 | 734 | 734 | 1566 |
| 667 | 667 | 1499 | 735 | 735 | 1567 |
| 668 | 668 | 1500 | 736 | 736 | 1568 |
| 669 | 669 | 1501 | 737 | 737 | 1569 |
| 670 | 670 | 1502 | 738 | 738 | 1570 |
| 671 | 671 | 1503 | 739 | 739 | 1571 |
| 672 | 672 | 1504 | 740 | 740 | 1572 |
| 673 | 673 | 1505 | 741 | 741 | 1573 |
| 674 | 674 | 1506 | 742 | 742 | 1574 |
| 675 | 675 | 1507 | 743 | 743 | 1575 |
| 676 | 676 | 1508 | 744 | 744 | 1576 |
| 677 | 677 | 1509 | 745 | 745 | 1577 |
| 678 | 678 | 1510 | 746 | 746 | 1578 |
| 679 | 679 | 1511 | 747 | 747 | 1579 |
| 680 | 680 | 1512 | 748 | 748 | 1580 |
| 681 | 681 | 1513 | 749 | 749 | 1581 |
| 682 | 682 | 1514 | 750 | 750 | 1582 |
| 683 | 683 | 1515 | 751 | 751 | 1583 |
| 684 | 684 | 1516 | 752 | 752 | 1584 |
| 685 | 685 | 1517 | 753 | 753 | 1585 |
| 686 | 686 | 1518 | 754 | 754 | 1586 |
| 687 | 687 | 1519 | 755 | 755 | 1587 |
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| 761 | 761 | 1593 | 829 | 829 | 1661 |
| 762 | 762 | 1594 | 830 | 830 | 1662 |
| 763 | 763 | 1595 | 831 | 831 | 1663 |
| 764 | 764 | 1596 | 832 | 832 | 1664 |
| 765 | 765 | 1597 | 833 | 833 | 1665 |
| 766 | 766 | 1598 | 834 | 834 | 1666 |
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| 776 | 776 | 1608 | 844 | 844 | 1676 |
| 777 | 777 | 1609 | 845 | 845 | 1677 |
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| 779 | 779 | 1611 | 847 | 847 | 1679 |
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| 785 | 785 | 1617 | 853 | 853 | 1685 |
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| 788 | 788 | 1620 | 856 | 856 | 1688 |
| 789 | 789 | 1621 | 857 | 857 | 1689 |
| 790 | 790 | 1622 | 858 | 858 | 1690 |
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| 792 | 792 | 1624 | 860 | 860 | 1692 |
| 793 | 793 | 1625 | 861 | 861 | 1693 |
| 794 | 794 | 1626 | 862 | 862 | 1694 |
| 795 | 795 | 1627 | 863 | 863 | 1695 |
| 796 | 796 | 1628 | 864 | 864 | 1696 |
| 797 | 797 | 1629 | 865 | 865 | 1697 |
| 798 | 798 | 1630 | 866 | 866 | 1698 |
| 799 | 799 | 1631 | 867 | 867 | 1699 |
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| 801 | 801 | 1633 | 869 | 869 | 1701 |
| 802 | 802 | 1634 | 870 | 870 | 1702 |
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| 808 | 808 | 1640 | 876 | 876 | 1708 |
| 809 | 809 | 1641 | 877 | 877 | 1709 |
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| 902 | 902 | 1734 | 969 | 969 | 1801 |
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| 910 | 910 | 1742 | 977 | 977 | 1809 |
| 911 | 911 | 1743 | 978 | 978 | 1810 |
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| 913 | 913 | 1745 | 980 | 980 | 1812 |
| 914 | 914 | 1746 | 981 | 981 | 1813 |
| 915 | 915 | 1747 | 982 | 982 | 1814 |
| 916 | 916 | 1748 | 983 | 983 | 1815 |
| 917 | 917 | 1749 | 984 | 984 | 1816 |
| 918 | 918 | 1750 | 985 | 985 | 1817 |
| 919 | 919 | 1751 | 986 | 986 | 1818 |
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| 921 | 921 | 1753 | 988 | 988 | 1820 |
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| 928 | 928 | 1760 | 995 | 995 | 1827 |
| 929 | 929 | 1761 | 996 | 996 | 1828 |
| 930 | 930 | 1762 | 997 | 997 | 1829 |
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| 932 | 932 | 1764 | 999 | 999 | 1831 |
| 933 | 933 | 1765 | 1000 | 1000 | 1832 |
| 934 | 934 | 1766 | 1001 | 1001 | 1833 |
| 935 | 935 | 1767 | 1002 | 1002 | 1834 |
| 936 | 936 | 1768 | 1003 | 1003 | 1835 |
| 937 | 937 | 1769 | 1004 | 1004 | 1836 |
| 938 | 938 | 1770 | 1005 | 1005 | 1837 |
| 939 | 939 | 1171 | 1006 | 1006 | 1838 |
| 940 | 940 | 1772 | 1007 | 1007 | 1839 |
| 941 | 941 | 1773 | 1008 | 1008 | 1840 |
| 942 | 942 | 1774 | 1009 | 1009 | 1841 |
| 943 | 943 | 1775 | 1010 | 1010 | 1842 |
| 944 | 944 | 1776 | 1011 | 1011 | 1843 |
| 945 | 945 | 1777 | 1012 | 1012 | 1844 |
| 946 | 946 | 1778 | 1013 | 1013 | 1845 |
| 947 | 947 | 1779 | 1014 | 1014 | 1846 |
| 948 | 948 | 1780 | 1015 | 1015 | 1847 |
| 949 | 949 | 1781 | 1016 | 1016 | 1848 |
| 950 | 950 | 1782 | 1017 | 1017 | 1849 |
| 951 | 951 | 1783 | 1018 | 1018 | 1850 |
| 952 | 952 | 1784 | 1019 | 1019 | 1851 |
| 953 | 953 | 1785 | 1020 | 1020 | 1852 |
| 954 | 954 | 1786 | 1021 | 1021 | 1853 |
| 955 | 955 | 1787 | 1022 | 1022 | 1854 |
| 956 | 956 | 1788 | 1023 | 1023 | 1855 |
| 957 | 957 | 1789 | 1024 | 1024 | 1856 |
| 958 | 958 | 1790 | 1025 | 1025 | 1957 |
| 959 | 957 | 1791 | 1026 | 1026 | 1858 |
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| 1030 | 1030 | 1862 | 1041 | 1041 | 1873 |
| 1031 | 1031 | 1863 | 1042 | 1042 | 1874 |
| 1032 | 1032 | 1864 | 1043 | 1043 | 1875 |
| 1033 | 1033 | 1865 | 1044 | 1044 | 1876 |
| 1034 | 1034 | 1866 | 1045 | 1045 | 1877 |
| 1035 | 1035 | 1867 | 1046 | 1046 | 1878 |
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# TITLE XIV.

## CRIMINAL CODE.

### CONSTRUCTION OF CRIMINAL STATUTES.

Where the penalty fixed by the statute is or may be one year's imprisonment, without stating whether it is in the penitentiary or the county jail, and where the imprisonment in the penitentiary adds forfeiture of civil or other rights or offices, and makes the offense a felony, the court will give the accused the benefit of the doubt and fix the term of imprisonment in the county jail: U. S. *v.* Powers & Robertson (1 Alaska Rep., 180).

Acts of Congress declaring forfeitures of vessels and cargoes for violation of the revenue laws are not to be construed with the strictness applicable to penal laws, but rather are to be so construed as to accomplish the purpose for which they were intended; for, in the technical sense, they are not penal, but rather remedial, intended to effect a public good and to prevent frauds: Ten cases of opium, Deady (70 Fed. Cases No. 13828), followed. The Cargo ex *Lady Essex* (39 Fed. Rep., 765), distinguished. The *Coquitlan* (57 Fed. Rep., 706; 1 Alaska Rep., 819).

Where the statute prescribing a penalty is susceptible of two constructions, that construction which is most favorable to the defendant must be given by the court: U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624).


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Mar. 3, 1899.
30 Stat. L., 1253, ch. 429.
Alaska.
Criminal code.

The penal and criminal laws of the United States of America and the procedure thereunder relating to the District of Alaska shall be as follows:

# CHAPTER ONE.

## GENERAL PROVISIONS.


Sec.
1881. Territorial area.
1882. Crimes and offenses, how punished.


Mar. 3, 1899.
30 Stat. L., 1253.
Territorial area.
15 Stat. L., 539.
Treaty Mar. 30, 1867.

SEC. 1881. That the District of Alaska consists of that portion of the territory of the United States ceded by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven.

Carter Code, sec. 1; Charlton Code, sec. 1.

Crimes and offenses, how punished.

SEC. 1882. That the crimes and offenses defined in this act, committed within the District of Alaska, shall be punished as herein provided.

Carter Code, sec. 2; Charlton Code, sec. 2.
U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624).

# CHAPTER TWO.

## OFFENSES AGAINST THE PERSON.


Sec.
1883. Murder, first degree.
1884. Murder by obstructing or injuring a railroad.
1885. Murder in the second degree.
1886. Manslaughter.
1887. Procuring another to commit self-murder.
1888. Administering medicine, etc., to pregnant women.
1889. Physicians administering poison, etc., while in a state of intoxication.
1890. Negligent homicide.
1891. When killing of a human being justifiable.
1892. Same subject.
1893. When killing of a human being excusable.
1894. Rape.
1895. Punishment for rape.
1896. Mayhem.
1897. Shooting, cutting, or stabbing with intent to kill, etc.
1898. Assault with intent to kill or commit rape or robbery.
1899. Dueling.
1900. Posting another for not engaging in duel.
1901. Assault with a cowhide, etc., being armed.
1902. Pointing firearms at and discharging the same and injuring thereby.
1903. Administering poison.
1904. Assault with a dangerous weapon.
1905. Assault or assault and battery.
1906. Robbery, pocket picking.
1907. Kidnaping.
1908. Child stealing.
1909. Blackmailing.
1910. Libel.


Mar. 3, 1899.
30 Stat. L., 1253–1256.

Murder, first degree.

SEC. 1883. That whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate, any rape, arson, robbery, or burglary, kills another, is guilty of murder in the first degree, and shall suffer death.

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Carter Code, sec. 3; Charlton Code, sec. 3.

U. S. *v.* Clark (46 Fed. Rep., 633; 1 Alaska Rep., 751). Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 751). Fitzpatrick *v.* U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 752). Bird *v.* U. S. (180 U. S. Rep., 356; 1 Alaska Rep., 727). U. S. *v.* Owens (2 Alaska Rep., 480). Owens *v.* U. S. (130 Fed. Rep., 279; 64 C. C. A., 525; 2 Alaska Rep., 683). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Olds (24 Pac. Rep., 394). State *v.* Johnson (7 Or. Rep., 211). State *v.* Ellsworth (47 Pac. Rep., 199). State *v.* Garrand (5 Or. Rep., 216). State *v.* Brown (7 Or. Rep., 186). State *v.* Grant (7 Or. Rep., 414). State *v.* Wintzingerode (9 Or. Rep., 153). State *v.* Louth (80 Pac. Rep., 660). State *v.* Smith (71 Pac. Rep., 973). State *v.* Williams (80 Pac. Rep., 655). State *v.* Marten (83 Pac. Rep., 869). State *v.* Barnes (85 Pac. Rep., 998). State *v.* Megorden (88 Pac. Rep., 306).

Murder by obstructing or injuring a railroad.

SEC. 1884. That whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree, and shall suffer death. That in all cases where the accused is found guilty of the crime of murder under this and the next preceding section, the jury may qualify their verdict by adding thereto "without capital punishment"; and whenever the jury shall return a verdict qualified as aforesaid the person convicted shall be sentenced to imprisonment at hard labor for life.

Carter Code, sec. 4; Charlton Code, sec. 4.

Fitzpatrick *v.* U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 752). State *v.* Miller (74 Pac. Rep., 658). State *v.* Warren (69 Pac. Rep., 679). State *v.* Thompson (88 Pac. Rep., 583).

Murder in the second degree.

SEC. 1885. That whoever purposely and maliciously, except as provided in the last two sections, kills another, is guilty of murder in the second degree, and shall be imprisoned in the penitentiary not less than fifteen years.

Carter Code, sec. 5; Charlton Code, sec. 5.

U. S. *v.* Owens (2 Alaska Rep., 480). State *v.* Henderson (32 Pac. Rep., 1030).

Manslaughter.

SEC. 1886. That whoever unlawfully kills another, except as provided in the last three sections, is guilty of manslaughter, and shall be imprisoned in the penitentiary not more than twenty nor less than one year.

Carter Code, sec. 6; Charlton Code, sec. 6.

State *v.* Gray (74 Pac. Rep., 927).

Procuring another to commit self-murder.

SEC. 1887. That if any person shall purposely and deliberately procure another to commit self-murder or assist another in the commission thereof, such person shall be deemed guilty of manslaughter, and shall be punished accordingly.

Carter Code, sec. 7; Charlton Code, sec. 7.

Administering medicine, etc., to pregnant women.

SEC. 1888. That if any person shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter, and shall be punished accordingly.

Carter Code, sec. 8; Charlton Code, sec. 8.

State *v.* Glass (5 Or. Rep., 73). State *v.* Clements (14 Pac. Rep., 410). Belt *v.* Spaulding (20 Pac. Rep., 827). State *v.* Bawker (38 Pac. Rep., 124). State *v.* Fuller (96 Pac. Rep., 456). State *v.* Atwood (102 Pac. Rep., 295).

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Physicians administering poison, etc., while in a state of intoxication.

SEC. 1889. That if any physician, or any person acting as or pretending to be a physician, while in a state of intoxication, shall, without a design to effect death, administer any poison, drug, or medicine, or do any other act to another person which shall produce the death of such other, such physician shall be deemed guilty of manslaughter, and shall be punished accordingly.

Carter Code, sec. 9; Charlton Code, sec. 9.

Negligent homicide.

SEC. 1890. That every killing of a human being by the culpable negligence of another, when such killing is not murder in the first or second degree, or is not justifiable or excusable, shall be deemed manslaughter, and shall be punished accordingly.

Carter Code, sec. 10; Charlton Code, sec. 10.

When killing of a human being justifiable.

SEC. 1891. That the killing of a human being is justifiable, when committed by public officers or those acting in their aid and assistance and by their command, either—

First. In obedience to the judgment of a competent court;

Second. When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty;

Third. When necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued; or

Fourth. When necessarily committed in arresting a person fleeing from justice who has committed a felony.

Carter Code, sec. 11; Charlton Code, sec. 11.

Same subject.

SEC. 1892. That the killing of a human being is also justifiable when committed by any person as follows:

First. To prevent the commission of a felony upon such person, or upon his or her husband, wife, parent, child, master, mistress, or servant;

Second. To prevent the commission of a felony upon the property of such person, or upon property in his possession, or upon or in any dwelling house where such person may be;

Third. In the attempt, by lawful ways and means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace.

Carter Code, sec. 12; Charlton Code, sec. 12.

State *v.* Olds (24 Pac. Rep., 394).
Goodall *v.* State (1 Or. Rep., 333).
State *v.* Bertrand (3 Or. Rep., 61).
State *v.* Tartar (37 Pac. Rep., 53).
State *v.* Morey (35 Pac. Rep., 655).
State *v.* Porter (49 Pac. Rep., 964).
State *v.* Doddson (4 Or. Rep., 64).
State *v.* Hawkins (23 Pac. Rep., 475).
State *v.* Young (96 Pac. Rep., 1067).

When killing of a human being excusable.

SEC. 1893. That the killing of a human being is excusable when committed:

First. By accident or misfortune in lawfully correcting a child, or in doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent; or,

Second. By accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon a sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel or unusual manner.

Carter Code, sec. 13; Charlton Code, sec. 13.

Rape.

SEC. 1894. That whoever has carnal knowledge of a female person, forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

Carter Code, sec. 14; Charlton Code, sec. 14.

State *v.* Welsh (68 Pac. Rep., 808).
State *v.* Colestock (67 Pac. Rep., 418).
State *v.* Ryan (82 Pac. Rep., 703).

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Punishment for rape.

SEC. 1895. That a person convicted of rape upon his daughter, or sister, or a female person under twelve years of age, shall be imprisoned in the penitentiary during life; and a person convicted of rape upon any other female person shall be imprisoned in the penitentiary not more than twenty years nor less than three years.

Carter Code, sec. 15; Charlton Code, sec. 15.

Mayhem.

SEC. 1896. That whoever, with malicious intent to maim or disfigure, cuts, bites, or slits the nose, ear, or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb or any member of another person, or whoever, with like intent, throws or pours upon or throws at another person, any scalding hot water, vitriol, or other corrosive acid or caustic substance, or whoever, with like intent, assaults another person with any dangerous instrument whatever, shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Carter Code, sec. 16; Charlton Code, sec. 16.

Shooting, cutting, or stabbing with intent to kill, etc.

SEC. 1897. That whoever maliciously shoots, stabs, cuts, or shoots at another person, with intent to kill, wound, or maim such person shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Carter Code, sec. 17; Charlton Code, sec. 17.

Assault with intent to kill or commit rape or robbery.

SEC. 1898. That whoever assaults another with intent to kill, or to commit rape or robbery upon the person so assaulted, shall be imprisoned in the penitentiary not more than fifteen years nor less than one year.

Carter Code, sec. 18; Charlton Code, sec. 18.

U. S. *v.* Williams (2 Fed. Rep., 61; 1 Alaska Rep., 753).

State *v.* Branton (87 Pac. Rep., 535).

Dueling.

SEC. 1899. That whoever fights a duel, or is second to a person who fights a duel, or challenges another to fight a duel, or accepts a challenge to fight a duel, or is knowingly the bearer of such challenge, or shall be present at the fighting of such duel as aid or surgeon, or shall advise, encourage, or promote such duel, shall be imprisoned in the penitentiary not more than ten years nor less than one year.

Carter Code, sec. 19; Charlton Code, sec. 19.

Posting another for not engaging in duel.

SEC. 1900. That whoever shall in any manner post another, or in writing or print use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, shall be imprisoned in the penitentiary not more than two years nor less than one year.

Carter Code Sec. 20; Charlton Code, sec. 20.

Assault, etc., with a cowhide, and being armed.

SEC. 1901. That whoever shall assault, or assault and beat another with a cowhide, whip, stick, or like thing, having at the time in his possession a pistol, dirk, or other deadly weapon, with intent to intimidate and prevent such other from resisting or defending himself, shall be punished by imprisonment in the penitentiary not more than ten years nor less than one year.

Carter Code, sec. 21; Charlton Code, sec. 21.
State *v.* Taylor (93 Pac. Rep., 252).

Pointing firearms at and discharging the same and injuring thereby.

SEC. 1902. That whoever intentionally, and without malice, points or aims any firearm at or toward any person, or discharges any firearm so pointed or aimed, or maims or injures any person by the discharge of any firearm so pointed or aimed, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. This section shall not extend to any case where firearms are

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used in self-defense or in the discharge of official duty, or in case of justifiable homicide.

Carter Code, sec. 22; Charlton Code, sec. 22.

Administering poison.

SEC. 1903. That whoever administers poison to a person, with intent to kill or injure such person, or mingles poison with food, drink, or medicine, with intent to kill or injure any human being, or willfully poisons any well, spring, cistern, or reservoir of water, shall be imprisoned in the penitentiary not more than fifteen years nor less than two years.

Carter Code, sec. 23; Charlton Code, sec. 23.

Assault with a dangerous weapon.

SEC. 1904. That whoever, being armed with a dangerous weapon, shall assault another with such weapon, shall be punished by imprisonment in the penitentiary not more than ten years nor less than six months, or by imprisonment in the county jail not more than one year nor less than one month, or by fine not less than one hundred dollars nor more than one thousand dollars.

Carter Code, sec. 24; Charlton Code, sec. 24.

Jackson *v.* U. S. (102 Fed. Rep., 483; 42 C. C. A., 452; 1 Alaska Rep., 758). Hickey *v.* U. S. (168 Fed. Rep., 536; 93 C. C. A.; 616). U. S. *v.* Williams (6 Saw. Rep., 244). State *v.* Mizis (86 Pac. Rep., 361). Johnson *v.* U. S. (154 Fed. Rep., 445; 83 C. C. A., 299). State *v.* Branton (87 Pac. Rep., 535). State *v.* Bock (88 Pac. Rep., 318). State *v.* Godfrey (20 Pac. Rep., 625). State *v.* Taylor (93 Pac. Rep., 252). State *v.* Walton (91 Pac. Rep., 494).

Assault or assault and battery.

SEC. 1905. That whoever, not being armed with a dangerous weapon, unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than six months, or both.

Carter Code, sec. 25; Charlton Code, sec. 25.

State *v.* Houghton (75 Pac. Rep., 822). State *v.* McCann (72 Pac. Rep., 137).

Robbery, pocket picking.

SEC. 1906. That whoever, by force or violence, or by putting in fear, steals and takes from the person of another anything of value, is guilty of robbery, and shall be imprisoned in the penitentiary not more than fifteen years nor less than one year; and whoever, otherwise than by force and violence or by putting in fear, shall steal and take from the person of another anything of value, shall be imprisoned in the penitentiary not exceeding five years nor less than one year.

Carter Code, sec. 26; Charlton Code, sec. 26.

Kidnaping.

SEC. 1907. That every person who, without lawful authority, forcefully seizes and confines another or inveigles or kidnaps another, with intent either—

First. To cause such other person to be secretly confined or imprisoned in said district against his will; or

Second. To cause such other person to be sent out of said District against his will, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Carter Code, sec. 27; Charlton Code, sec. 27.

In re Kelly (46 Fed. Rep., 654). | State *v.* White (87 Pac. Rep., 137).

Child stealing.

SEC. 1908. That every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, shall be punished by imprisonment in the penitentiary not less than six months nor more than ten years, or by imprisonment in the county jail not

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exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Carter Code, sec. 28; Charlton Code, sec. 28.

Blackmailing.

SEC. 1909. That whoever, either verbally or by written or printed communication, shall threaten any injury to the person or property of another, or that of any person standing in the relation of parent or child, husband or wife, or sister or brother to such other, or shall in like manner threaten to accuse another of any crime, or of any immoral conduct which, if true, would tend to degrade and disgrace such person, or to expose or publish any of his infirmities or failings, or in any way to subject him to the ridicule or contempt of society, with intent thereby to extort any pecuniary advantage or property from such other, or with intent to compel such other to do any act against his will, shall be imprisoned in the penitentiary not more than five years nor less than six months, or imprisoned in the county jail not more than one year nor less than three months.

Carter Code, sec. 29; Charlton Code, sec. 29.

U. S. *v.* Carr (3 Saw., Rep., 302; 1 Alaska Rep., 745). State *v.* Belding (71 Pac. Rep., 330)

NOTE.—For extortion by official see sec. 85, U. S. Criminal Code.

Libel.

SEC. 1910. That if any person shall willfully, by any means other than words orally spoken, publish or cause to be published of or concerning another any false and scandalous matter, with intent to injure or defame such other person, upon conviction thereof he shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine not less than one hundred dollars nor more than five hundred dollars. Any allusion to any person or family, with intent to injure, defame, or maliciously annoy such family, shall be deemed to come within the provisions of this section.

Carter Code, sec. 30; Charlton Code, sec. 30.

State *v.* Mason (38 Pac. Rep., 130; 26 L. R. A., 779). State *v.* Conklin (84 Pac. Rep., 473).

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## CHAPTER THREE.

### OFFENSES AGAINST PROPERTY.


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Sec.
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1954. Officer, etc., of corporation publishing false reports.
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Mar. 3, 1899.
30 Stat. L., 1256–1263.

Arson by burning dwelling house in nighttime.

SEC. 1911. That if any person shall willfully and maliciously burn any dwelling house of another, or shall willfully or maliciously set fire to any building owned by himself or another, by the burning whereof any dwelling house of another shall be burned such person shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than ten nor more than twenty years.

NOTE.—A dwelling house as here used is defined by sec. 2088, post.

Carter Code, sec. 31; Charlton Code, sec. 31.

State *v.* Taylor (84 Pac. Rep., 82). | State *v.* Watson (85 Pac. Rep., 336).

Arson by burning other building or boat in nighttime.

SEC. 1912. That if any person shall willfully and maliciously burn any church, courthouse, townhouse, meetinghouse, asylum, college, academy, schoolhouse, prison, jail, or other public building erected or used for public uses, or any steamboat, ship, or other vessel, or any banking house, warehouse, express office, storehouse, manufactory, mill, barn, stable, shop, or office of another, or shall willfully and maliciously set fire to any building or boat owned by himself or another, by the burning whereof any edifice, building, boat, or vessel mentioned in this section shall be burned such person shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than five nor more than fifteen years.

Carter Code, sec. 32; Charlton Code, sec. 32.

Maliciously burning other buildings.

SEC. 1913. That if any person shall willfully and maliciously burn any building whatsoever of another other than those specified in sections nineteen hundred and eleven and nineteen hundred and twelve, or shall willfully and maliciously burn any bridge, lock, dam, or flume of another, or erected or used for public uses, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Carter Code, sec. 33; Charlton Code, sec. 33.

Preceding sections of this chapter to extend to married women.

SEC. 1914. That the preceding sections of this chapter shall each extend to and include a married woman who may commit either of the crimes therein specified, though the property burned or set on fire may belong wholly or in part to her husband.

Carter Code, sec. 34; Charlton Code, sec. 34.

Malicious burning of lumber or vegetable products.

SEC. 1915. That if any person shall willfully and maliciously burn any pile or parcel of boards or other lumber, timber, or wood; or any stack of hay, grain, or other vegetable product; or any hay, grain, or other vegetable product severed from the soil, but not stacked; or any growing grass or grain, or other growing vegetable

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product of the soil, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years.

Carter Code, sec. 35; Charlton Code, sec. 35.

Burning with intent to injure insurer.

SEC. 1916. That if any person shall willfully burn or in any other manner injure or destroy any property whatever which is at the time insured against loss or damage by fire or other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three nor more than seven years.

Carter Code, sec. 36 Charlton Code, sec. 36.

Burglary in dwelling house in nighttime.

SEC. 1917. That if any person shall break and enter any dwelling house in which there is at the time some human being, with intent to commit a crime therein, or, having entered with such intent, shall break any such dwelling house or be armed with a dangerous weapon therein, or assault any person lawfully therein, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years.

NOTE.—A dwelling house as here used is defined in sec. 2089, post.

Carter Code, sec. 37; Charlton Code, sec. 37

State *v.* Mack (25 Pac. Rep., 639). | State *v.* Huntley (35 Pac. Rep., 1064).
State *v.* Wright (24 Pac. Rep., 229). |

Burglary not in dwelling house.

SEC. 1918. That if any person shall break and enter any building within the curtilage of any dwelling house, but not forming a part thereof, or shall break and enter any building or part thereof, booth, tent, railway car, vessel, boat, or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony therein, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Carter Code, sec. 38; Charlton Code, sec. 38.

State *v.* Moore (25 Pac. Rep., 639). | State *v.* John (13 Pac. Rep., 647).
State *v.* Wright (24 Pac. Rep., 229). |

Burglary in dwelling house by attempting to get out.

SEC. 1919. That if any person, having committed or attempted to commit a crime in the dwelling house of another, shall break any outer door, window shutter, or other part of such house, to get out of the same, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Carter Code, sec. 39; Charlton Code, sec. 39.

Breaking and entering, what constitutes.

SEC. 1920. That every unlawful entry of a dwelling house with intent to commit a crime therein shall be deemed a breaking and entering of such dwelling house within the meaning of section nineteen hundred and seventeen; and every unlawful entry of any building booth, tent, railway car, vessel, boat, or other structure or erection mentioned in section nineteen hundred and eighteen, with intent to steal or commit any felony therein, shall be deemed a breaking and entering of the same within the meaning of such section nineteen hundred and eighteen.

Carter Code, sec. 40; Charlton Code, sec. 40.

State *v.* Huntley (35 Pac. Rep., 1064).

Larceny.

SEC. 1921. That if any person shall steal any goods or chattels, or any Government note, or bank note, promissory note, or bill of exchange, bond, or other thing in action, or any book of accounts, order,

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or certificate, concerning money or goods, due or to become due or to be delivered, or any deed or writing containing a conveyance of land or any interest therein, or any bill of sale, or writing containing a conveyance of goods or chattels or any interest therein, or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, the property of another, such person shall be deemed guilty of larceny, and upon conviction thereof, if the property stolen shall exceed in value thirty-five dollars, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years; but if the property stolen shall not exceed the value of thirty-five dollars, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than twenty-five nor more than one hundred dollars.

Carter Code, sec. 41; Charlton Code, sec. 41.

In re Burkell (2 Alaska Rep., 109, 114, 115, 120). State *v.* Savage (60 Pac. Rep., 610). State *v.* Hanlon (48 Pac. Rep., 353). State *v.* Kelliher (50 Pac. Rep., 532). Howell *v.* State (1 Or. Rep., 242). State *v.* Lee Yan (10 Or. Rep., 365). State *v.* Hunsaker (19 Pac. Rep., 605). State *v.* Swyze (3 Pac. Rep., 574). State *v.* Hull (54 Pac. Rep., 159). State *v.* Dale (8 Or. Rep., 229). State *v.* Ducker (8 Or. Rep., 394). State *v.* Wilson (6 Or. Rep., 428). State *v.* Johnson (2 Or. Rep., 115). State *v.* McCormick (8 Or. Rep., 236). State *v.* Browning (82 Pac. Rep., 955). State *v.* Meldrum (70 Pac. Rep., 526). State *v.* Reyner (91 Pac. Rep., 301). Beckwith *v.* Galice Mines Co. (93 Pac. Rep., 453).

Larceny in house, boat, or public building.

SEC. 1922. That if any person shall commit the crime of larceny in any dwelling house, banking house, office, store, shop, or warehouse, or in any ship, steamboat, or other vessel, or shall break and enter in the night or day time any church, courthouse, meetinghouse, town house, college, academy, or other building erected or used for public uses, and commit the crime of larceny therein, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years.

Carter Code, sec. 42; Charlton Code, sec. 42.

In re Burkell (2 Alaska Rep., 114). State v. O'Neal (27 Pac. Rep., 1038). State *v.* Hanlon (48 Pac. Rep., 353). State *v.* Taylor (3 Or. Rep., 10). State *v.* Savage (60 Pac. Rep., 610).

Larceny by stealing horse, etc.

SEC. 1923. That if any person shall commit the crime of larceny by stealing any horse, gelding, mare, colt, mule, ass, jenny, bull, steer, cow, calf, reindeer, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years.

Carter Code, sec. 43; Charlton Code, sec. 43.

In re Burkell (2 Alaska Rep., 115). State *v.* Howard (69 Pac. Rep., 50). State *v.* Sally (70 Pac. Rep., 396). State *v.* Minnick (102 Pac. Rep., 605). State *v.* Brinkley (104 Pac. Rep., 893).

Driving domestic animals from their range, etc.

SEC. 1924. That any person, not the owner or owners, who shall knowingly take or drive, without the consent of the owner or owners, or cause to be taken or driven, or shall assist in driving or taking away from the range or place where the same may be lawfully grazing, pasturing, or ranging, any horse, colt, mare, foal, mule, ass, jenny, or bull, cow, heifer, steer, calf, reindeer, sheep, hog, or any other description of domestic animal or animals, from where the same may be lawfully grazing or in the habit of ranging, or where the same may have been herded or placed by the owner or owners thereof, for a distance of more than ten miles from such place where the same may have been so located or placed by the owner or owners thereof, or where the same may be in the habit of grazing or ranging, shall be fined in any sum not less than fifty dollars nor more than four hundred dollars, and shall be liable to the owner or owners of such

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animal or animals for all damages sustained by reason of such driving or taking away such domestic animal.

Carter Code, sec. 44; Charlton Code, sec. 44.

Larceny by altering marks or brands upon animals.

SEC. 1925. That if any person shall willfully and knowingly make, alter, or deface any artificial earmark or brand upon any horse, mare, gelding, foal, mule, ass, jenny, bull, cow, steer, or calf, the property of another, with intent thereby to convert the same to his own use, such person shall be deemed guilty of larceny, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Carter Code, sec. 45; Charlton Code, sec. 45.
State *v.* Howard (69 Pac. Rep., 50).

Embezzlement by servant.

SEC. 1926. That if any officer, agent, clerk, employee, or servant of any private person or persons, copartnership, or incorporation shall embezzle or fraudulently convert to his own use, or shall take or secrete with intent to embezzle or fraudulently convert to his own use, any money, property, or thing of another which may be the subject of larceny, and which shall have come into his possession or be under his care by virtue of such employment, such officer, agent, clerk, employee, or servant shall be deemed guilty of embezzlement, and upon conviction thereof, if the property embezzled shall exceed in value thirty-five dollars, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years; but if the property embezzled shall not exceed the value of thirty-five dollars, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than twenty-five nor more than one hundred dollars.

Carter Code, sec. 46; Charlton Code, sec. 46.
State *v.* Sweet (2 Or. Rep., 127).
State *v.* Reinhart (38 Pac. Rep., 822).
State *v.* Marco (50 Pac. Rep., 799).
State *v.* Lewis (24 Pac. Rep., 914).
State *v.* Stearns (42 Pac. Rep., 615).
State *v.* Browning (82 Pac. Rep., 955).
State *v.* Conklin (84 Pac. Rep., 482).

Embezzlement by bailee.

SEC. 1927. That if any bailee, with or without hire, shall embezzle, or wrongfully convert to his own use, or shall secrete, with intent to convert to his own use, or shall fail, neglect, or refuse to deliver, keep, or account for, according to the nature of his trust, any money or property of another delivered or intrusted to his care or control, and which may be the subject of larceny, such bailee, upon conviction thereof, shall be deemed guilty of embezzlement and punished accordingly; and if any such bailee shall receive grain of any kind from different bailors, and mix the same and store it together in bulk, in such case, in an indictment charging such bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is in more than one of said bailors. And every mortgagor of personal property having possession of property mortgaged shall be deemed a bailee within the provision of this section.

Carter Code, sec. 47; Charlton Code, sec. 47.
State *v.* Skinner (46 Pac. Rep., 368).
State *v.* Lucas (33 Pac. Rep., 538).
State *v.* You (25 Pac. Rep., 355).
State *v.* Thompson (42 Pac. Rep., 1002). State *v.* Littschke (40 Pac. Rep., 167). Mays *v.* Stephens (63 Pac. Rep., 760). State *v.* Humphries (70 Pac. Rep., 824).

Embezzlement of public money.

SEC. 1928. That if any person shall receive any money whatever for said district or for any county, town, or other municipal or public corporation therein, or shall have in his possession any money whatever belonging to such district, county, town, or corporation, or in



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which said district, county, town, or corporation has an interest, and shall in any way convert to his own use any portion thereof or shall loan, with or without interest, any portion thereof, or shall neglect or refuse to pay over any portion thereof as by law directed and required, or when lawfully demanded so to do, such person shall be deemed guilty of embezzlement, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years, and by fine equal to twice the amount so converted, loaned, or neglected or refused to be paid, as the case may be.

Carter Code, sec. 48; Charlton Code, sec. 48.

State *v.* Howe (44 Pac. Rep., 672). State *v.* Dale (8 Or. Rep., 235). State *v.* Pomeroy (46 Pac. Rep., 957). State *v.* Hanner (57 Pac. Rep., 629). Baker *v.* Williams & English Bnkg. Co. (70 Pac. Rep., 711). State *v.* Nellon (73 Pac. Rep., 322). State *v.* Ross (104 Pac. Rep., 596).

Same subject.

SEC. 1929. That the amount of the money converted, loaned, or neglected or refused to be paid must be ascertained by the verdict of the jury as near as may be, and no person in any proceeding against him under section nineteen hundred and twenty-eight can be allowed to set up or prove any private demand which he may have or claim to have against such district, county, town, or corporation as a defense to such proceeding.

Carter Code, sec. 49; Charlton Code, sec. 49.

Trustees converting property.

SEC. 1930. That if any person, being the trustee of any property for the benefit of another, or for any public or charitable use, shall, with intent to defraud, by any means convert the same or any portion thereof to his own use or benefit, or to the use and benefit of another not entitled thereto, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Carter Code, sec. 50; Charlton Code, sec. 50.
State v. Thompson (42 Pac. Rep., 1002).

Banker, attorney, etc., converting property.

SEC. 1931. That if any person, being a banker, broker, merchant, attorney, or agent, and being intrusted with the property of another, shall, by any means, with intent to defraud, convert the same, or any portion thereof, to his own use or benefit, or to the use or benefit of another not entitled thereto, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Carter Code, sec. 51; Charlton Code, sec. 51.

Buying, receiving, or concealing stolen property.

SEC. 1932. That every person who buys, receives, or conceals any money, goods, bank notes, or other thing which may be the subject of larceny and which has been feloniously taken or stolen from any other person, knowing the same to have been so taken or stolen, shall be punished by a fine of not more than one thousand dollars and by imprisonment at hard labor not more than three years.

Carter Code, sec. 52; Charlton Code, sec. 52.

Larceny by falsely personating another.

SEC. 1933. That if any person shall falsely personate or represent another, and in such assumed character shall receive or obtain any money or property whatever intended to be delivered to the person so personated or represented, with intent to defraud or to convert the same to his own use, such person shall be deemed guilty of larceny, and upon conviction thereof shall be punished accordingly.

Carter Code, sec. 53; Charlton Code, sec. 53.

Obtaining goods or writing by false pretenses.

SEC. 1934. That if any person shall, by any false pretenses or by any privy or false token, and with intent to defraud, obtain, or

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attempt to obtain, from any other person any money or property whatever, or shall obtain, or attempt to obtain, with the like intent, the signature of any person to any writing the false making whereof would be punishable as forgery, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years. The making of a bill of sale, or assignment, or mortgage of personal property, by any person not the owner thereof, for the purpose of obtaining money or credit or to secure an existing indebtedness, shall be deemed a false pretense within the meaning of this section.

Carter Code, sec. 54; Charlton Code, sec. 54.

Griggs *v.* U. S. (158 Fed. Rep., 572). State *v.* Renick (56 Pac. Rep., 275; 44 L. R. A., 266). State *v.* Bloodsworth (34 Pac. Rep., 1023). State *v.* Hunscom (43 Pac Rep., 167). State *v.* Lurch (6 Pac. Rep., 405). State *v.* Miller (85 Pac. Rep., 81). Beckwith *v.* Galice Mines Co. (93 Pac. Rep., 453). State *v.* Germain (103 Pac. Rep., 521).

NOTE.—See sec. 2263, chap. 15, Criminal Code of Procedure, Title XV.

Malicious or wanton injury to animals or other personal property.

SEC. 1935. That if any person shall maliciously or wantonly kill, wound, disfigure, or injure any animal the property of another, or shall willfully administer any poison to any such animal, or shall maliciously expose any poison with intent that the same shall be taken by any such animal, or shall maliciously or wantonly, in any manner or by any means not otherwise particularly specified in this chapter, destroy or injure any personal property of another, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Carter Code, sec. 55; Charlton Code, sec. 55.

State *v.* Magone (56 Pac. Rep., 648).

Destroying boat or vessel with intent to defraud owner or owner of goods laden thereon.

SEC. 1936. That if any person shall willfully cast away, burn, sink, or otherwise destroy any ship, steamboat, or other vessel, with intent to injure or defraud any owner of such ship, steamboat, or other vessel, or with intent to injure or defraud the owner of any property laden on board the same, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three nor more than ten years.

Carter Code, sec. 56; Charlton Code, sec. 56.

Fitting out vessel with intent to be destroyed.

SEC. 1937. That if any person shall lade, equip, or fit out, or assist in lading, equipping, or fitting out, any ship, steamboat, or other vessel, with the intent that the same shall be willfully cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer of said ship, steamboat, or other vessel, or of any property laden on board the same, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Carter Code, sec. 57; Charlton Code, sec. 57.

Making or exhibiting false bill of lading.

SEC. 1938. That if the owner of any ship, steamboat, or other vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned or assisting in the fitting out or lading of any such ship, steamboat, or other vessel, shall make out or exhibit or cause to be made out or exhibited any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimate of any property laden or pretended to be laden on board of such ship, steamboat, or other vessel, with intent to injure or defraud any insurer of such ship, steamboat, or other vessel or property, or any part thereof,

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such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years.

Carter Code, sec. 58; Charlton Code, sec. 58.

Making conveyance without title with intent to defraud.

SEC. 1939. That if any person shall falsely and knowingly represent that he is the owner of any land to which he has no title, or shall falsely represent that he is the owner of any interest or estate in any land, and shall execute any conveyance of the same with intent to defraud anyone, such person, upon conviction thereof, shall be punished by imprisonment in the penitenairy not less than six months nor more than two years.

Carter Code, sec. 59; Charlton Code, sec. 59.
State *v.* Bryan (32 Pac. Rep., 623).

Boom, bridge, road, wharf, etc.

SEC. 1940. That if any person shall willfully break, cut away, injure, or destroy any boom or wharf lawfully established, being upon any river or other water in the said District of Alaska, or break down, injure, remove, or destroy any free or toll bridge, railway, plank road, macadamized road, or any gate upon any such road, or any lock or embankment of any canal, such person shall be imprisoned in the penitentiary not less than six months nor more than two years, or be imprisoned in the county jail not less than three months nor more than one year, or be fined not less than fifty dollars nor more than one thousand dollars.

Carter Code, sec. 60; Charlton Code, sec. 60.

Setting fire to prairie.

SEC. 1941. That if any person shall maliciously or wantonly set on fire any prairie or other grounds, other than his own or those of which he is in the lawful possession, or shall willfully or negligently permit or suffer the fire to pass from his own grounds or premises, to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 61; Charlton Code, sec. 61.

Injury to fruit trees, fences, etc.

SEC. 1942. That if any person shall maliciously or wantonly cut down, destroy, or injure any bush, shrub, fruit, or other tree not his own, standing or growing for fruit, ornament, or other useful purpose, or shall willfully break the glass in or deface any building not his own, or shall willfully break down or destroy any fence or hedge belonging to or inclosing land not his own, or shall willfully throw down, or open and leave down or open any bars, gate, or fence, or hedge belonging to or inclosing land not his own, or shall maliciously or wantonly sever from the land of another any produce thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than ten dollars nor more than five hundred dollars.

Carter Code, sec. 62; Charlton Code, sec. 62.

Injury to monuments, etc.

SEC. 1943. That if any person shall willfully deface, break down, injure, remove, or destroy any monument erected or used for the purpose of designating the boundary of any town, tract, or parcel of land, or any tree marked for that purpose; or shall willfully break down, injure, remove, or destroy any milestone, board, or post, or any guide or finger board erected or placed upon any road or highway; or shall willfully alter, deface, or obliterate the inscription upon any such monument, stone, post, or board; or shall willfully extinguish any lamp, or break, injure, destroy, or remove any lamp,

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lamp-post, sign, or signpost, or any railing or posts erected upon any street, highway, sidewalk, court, or passage, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than ten dollars nor more than five hundred dollars.

Carter Code, sec. 63; Charlton Code, sec. 63.

Trespassing on improved lands.

SEC. 1944. That if any person shall willfully enter upon the garden, orchard, or other improved lands of another, or in his possession, with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or vegetable products there growing and being, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one nor more than six months, or by fine not less than five nor more than fifty dollars.

Carter Code, sec. 64; Charlton Code, sec. 64.

Fast driving over public bridge.

SEC. 1945. That if any person shall willfully ride or drive over any public bridge at a greater speed than a walk, or shall drive at any one time more than twenty head of cattle, horses, or mules over any such bridge, such person shall be punished by fine not less than ten nor more than one hundred dollars.

Carter Code, sec. 65; Charlton Code, sec. 65.

Trespassing on lands of another.

SEC. 1946. That if any person shall willfully cut down, destroy, or injure any standing or growing tree upon the lands of another, or shall willfully take or remove from any such lands any timber or wood previously cut or severed from the same, or shall willfully dig, take, quarry, or remove from any such lands any mineral, earth, or stone, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Carter Code, sec. 66; Charlton Code, sec. 66.

Trespassing on lands in possession of another.

SEC. 1947. That if any person other than an officer on lawful business shall go or trespass on any lands or premises in the lawful occupation of another, and shall fail, neglect, or refuse to depart therefrom immediately and remain away until permitted to return upon the verbal or printed or written notice of the owner or person in the lawful occupation of said lands or premises, such trespasser shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not less than five nor more than fifty dollars, and shall be committed, in default of payment of the fine and costs imposed, one day for each two dollars of the said fine and costs.

Carter Code, sec. 67; Charlton Code, sec. 67.

Mitchell *v.* Galen (1 Alaska Rep., 339). U. S. *v.* Roth (2 Alaska Rep., 257). U. S. *v.* Madigan (3 Alaska Rep., 72). Packwood *v.* State (33 Pac. Rep., 674). Binhoff *v.* State (90 Pac. Rep., 586). State *v.* Sally (70 Pac. Rep., 396).

Evidence of notice.

SEC. 1948. That printed or written notices having attached thereto, by authority, the name of the owner or person in the lawful occupation of said lands or premises, and requiring all persons to forbear trespassing on said lands or premises and to depart therefrom, posted in three conspicuous places on said lands or premises, shall be held and deemed to be sufficient prima facie evidence of notice as mentioned in the last preceding section.

Carter Code, sec. 68; Charlton Code, sec. 68.

Using false weight, etc.

SEC. 1949. That if any person shall knowingly use any false weight or measure, and shall thereby defraud or otherwise injure another, or shall knowingly mark or stamp a false weight or measure or false

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tare upon any cask or package, or shall knowingly sell or offer for sale any cask or package so marked, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 69; Charlton Code, sec. 69.

Opening or publishing contents of sealed letter.

SEC. 1950. That if any person shall willfully open or read, or cause to be opened and read, any sealed letter not addressed to himself, without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, or shall willfully, without the like authority, publish any letter or portion thereof, knowing it to have been so opened, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than five hundred dollars; but this section shall not be construed to extend to or include any act made punishable by any other law of the United States.

Carter Code, sec. 70; Charlton Code, sec. 70.

Fraudulently producing heir.

SEC. 1951. That if any person shall fraudulently produce an infant and falsely pretend that it was born of any parent whose child would be entitled to inherit any real estate or interest therein or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate or interest therein or the distribution of any such personal estate from any person lawfully entitled thereto, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Carter Code, sec. 71; Charlton Code, sec. 71.

Substituting another child for infant.

SEC. 1952. That if any person to whom an infant has been confided for nursing, education, or other purpose shall, with intent to deceive any parent or guardian of such child, substitute or produce to such parent or guardian another child in the place of the one so confided, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Carter Code, sec. 72; Charlton Code, sec. 72.

Officer, etc., of corporation falsifying records.

SEC. 1953. That if any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive anyone, willfully and knowingly destroy, alter, mutilate, or in any manner falsify, or concur in the destruction, alteration, mutilation, or falsification of any of the books, papers, writings, or securities belonging to or in the possession of such corporation or company, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year or by fine not less than fifty nor more than one thousand dollars.

Carter Code, sec. 73; Charlton Code, sec. 73.

Officer, etc., of corporation publishing false reports.

SEC. 1954. That if any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive anyone, willfully and knowingly make, circulate, or publish, or concur in the making, circulating, or publishing any written or printed statement or account concerning or relating to the liabilities, assets, or property of such corporation or company, which statement or account shall be false in any material particular, such person, upon conviction thereof, shall be punished in the manner provided in section nineteen hundred and fifty-three.

Carter Code, sec. 74; Charlton Code, sec. 74.

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Trespass on mining claims.

SEC. 1955. That any person who shall break or rob in any manner or who shall attempt to break or rob any flume, rocker, quartz, quartz vein, or lode, bedrock, sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim, with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one nor more than five years, or by fine not less than one hundred nor more than one thousand dollars, or by both such imprisonment and fine.

Carter Code, sec. 75; Charlton Code, sec. 75.

Mitchell *v.* Galen (1 Alaska Rep., 342). | Tiberg *v.* Warren (192 Fed. Rep., 458).

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# CHAPTER FOUR.

## FORGERY AND COUNTERFEITING.


Sec.
1956. Forgery of record, certificate, conveyance, etc.
1957. Forgery of evidence of debt issued by any Government, etc.
1958. Making or having in possession tool designed for counterfeiting.
1959. Counterfeiting gold or silver coin, etc.
1960. Making or having in possession tool for counterfeiting coin.
1961. What sufficient allegation of intention to defraud.
1962. Fraudulently joining parts of different instruments.
1963. Making false receipt or altering receipt of goods in warehouse
1964. Knowingly using or counterfeiting trade-marks, etc.
1965. Affixing fictitious signature.
1966. Testimony as to signature to bank notes.
1967. Punishment of person convicted of second crime.
1968. Adulterating or selling adulterated gold dust.
1969. Possession of adulterated gold dust.


Mar. 3, 1899.

30 Stat. L., 1263-1266.

Forgery of record, certificate, conveyance, etc.

SEC. 1956. That if any person shall, with intent to injure or defraud anyone, falsely make, alter, forge, counterfeit, print, or photograph any public record whatever, or any certificate, return, or attestation of any clerk, notary public, or other public officer in relation to any matter wherein such certificate, return, or attestation may be received as legal evidence, or any note, certificate, or other evidence of debt issued by any officer of said District, or any county, town, or other municipal or public corporation therein, authorized to issue the same, or any contract, charter, letters patent, deed, lease, bill of sale, will, testament, bond, writing obligatory, undertaking, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, evidence of debt, or any acceptance of a bill of exchange, indorsement or assignment of a promissory note, or any warrant, order, or check, or money, or other property, or any receipt for money or other property, or any acquittance or discharge for money or other property, or any plat, draft, or survey of land; or shall, with such intent, knowingly utter or publish as true and genuine any such false, altered, forged, counterfeited, falsely printed, or photographed record, writing, instrument, or matter whatever, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than twenty years.

Carter Code, sec. 76; Charlton Code, sec. 76.

State *v.* Wheeler (25 Pac. Rep., 394). State *v.* Lurch (6 Pac. Rep., 408, 411). State *v.* Dunn (32 Pac. Rep., 621). State *v.* Gee (42 Pac. Rep., 7). Ex parte Kindt (52 Pac. Rep., 187). State *v.* Kelliher (88 Pac. Rep., 867). Shirley *v.* State (1 Or. Rep., 269). State *v.* Hammelsy (96 Pac. Rep., 865).

NOTE.—See sec. 1961, post.

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Forgery of evidence of debt issued by any Government, etc.

SEC. 1957. That whoever shall, with intent to injure or defraud anyone, make, alter, forge, or counterfeit any bank bill, promissory note, draft, check, or other evidence of debt issued by any person or by the United States, said District, or any State or Territory of the United States, or any other State, Government, or country, or by any corporation, company, or person duly authorized for that purpose by the laws of the United States, said District, or any State or Territory of the United States, or any other State, Government, or country, or shall, with intent to injure or defraud anyone, knowingly utter, or publish, or pass, or tender in payment as true and genuine, any such false, altered, forged, or counterfeited bill, note, draft, check, or other evidence of debt, or shall have in his possession any such bill, note, draft, check, or other evidence of debt, with intent to utter or pass the same as true and genuine, knowing the same to be false, altered, forged, or counterfeited, shall be imprisoned in the penitentiary not less than one nor more than twenty years.

Carter Code, sec. 77; Charlton Code, sec. 77.
Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 758).

Making or having in possession tool designed for counterfeiting.

SEC. 1958. That if any person shall engrave, make, or begin to engrave, make, or mend any plate, block, press, or other tool, instrument, or implement, or shall make, prepare, or provide any paper or other materials adapted and designed for the forging or making any false or counterfeit bill, note, draft, check, or other evidence of debt, as specified in section one thousand nine hundred and fifty-seven, or shall have in his possession or control any such plate, block, press, or other tool, instrument, or implement, or paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false or counterfeit bill, note, draft, check, or other evidence of debt, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Carter Code, sec. 78; Charlton Code, sec. 78.

Counterfeiting gold or silver coin, etc.

SEC. 1959. That if any person shall counterfeit any gold, silver, or other coin current by law or usage within said District, or shall have in his possession or control any false coin counterfeited in the similitude of any gold, silver, or other coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter and pass the same as true and genuine, or shall, with intent to injure or defraud anyone, knowingly utter, pass, or tender in payment as true and genuine any such false and counterfeit coin, he shall be imprisoned in the penitentiary not less than one year nor more than ten years.

Carter Code, sec. 79; Charlton Code, sec. 79.

Making or having in possession tool for counterfeiting coin.

SEC. 1960. That if any person shall stamp, engrave, make, or mend, or begin to stamp, engrave, make, or mend, or have in his possession or control, any mold, pattern, die, puncheon, engine, press, or other tool, implement, or instrument adapted and designed for coining or making any counterfeit coin in the similitude of any gold, silver, or other coin current by law or usage in said District, with intent to use the same or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, such person, upon conviction thereof, shall be punished in the manner provided in section nineteen hundred and fifty-nine.

Carter Code, sec. 80; Charlton Code, sec. 80.

What sufficient allegation of intention to defraud.

SEC. 1961. That in any case where the intent to injure or defraud is necessary, by the provisions of this chapter, to constitute the crime, it shall be sufficient to allege in the indictment therefor an intent to

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injure or defraud without naming therein the particular person or body corporate intended to be injured or defrauded, and on the trial of the action it shall not be deemed a variance, but be deemed sufficient, if there appear to be an intent to injure or defraud the United States, or any State, Territory, county, town, or other municipal or public corporation, or any public officer in his official capacity, or any private corporation, copartnership, or member thereof, or any particular person or persons.

Carter Code, sec. 81; Charlton Code, sec. 81.

Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 758). State *v.* Lurch (6 Pac. Rep., 411). State *v.* McElvaine (58 Pac. Rep., 525).

Fraudulently joining parts of different instruments.

SEC. 1962. That if any person shall connect together different parts of several bank notes or other genuine instruments in such manner as to produce an additional or different note or instrument, with intent to utter or pass all of them as true and genuine, the same shall be deemed a forgery in like manner and with like effect as if each of them had been falsely made or forged, and shall be punished by imprisonment in the penitentiary not less than two years or more than twenty years.

Carter Code, sec. 82; Charlton Code, sec. 82.

Making false receipt or altering receipt of goods in warehouse.

SEC. 1963. That if any person shall willfully or knowingly make or alter any receipt or other written evidence of the delivery into any warehouse, commission house, forwarding house, mill, store, or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise which shall not have been so received or delivered previous to the making and uttering of such receipt or other written evidence thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year.

Carter Code, sec. 83; Charlton Code, sec. 83.

Knowingly using or counterfeiting trade-marks, etc.

SEC. 1964. That if any person shall willfully and knowingly use or cause to be used any private brands, label, stamp, or trade-mark of another, either by counterfeiting the same or using any impression or copy thereof made or prepared by the proprietor thereof, or shall willfully and knowingly use or cause to be used any colorable imitation of such brand, label, stamp, or trade-mark, with intent to deceive anyone, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than twenty nor more than three hundred dollars.

Carter Code, sec. 84; Charlton Code, sec. 84.

Affixing fictitious signature.

SEC. 1965. That if any fictitious or pretended signature purporting to be the signature of an officer or agent of any public or private corporation shall be affixed to any instrument or writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true and genuine, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed, and the person affixing to such instrument such fictitious or pretended signature shall be punished by imprisonment in the penitentiary not less than two years or more than twenty years.

Carter Code, sec. 85; Charlton Code, sec. 85.

Testimony as to signature to bank notes.

SEC. 1966. That in all prosecutions for forgery or counterfeiting any bank bill or note, or for uttering, publishing, or tendering in payment as true and genuine any forged or counterfeited bank bill

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or note, or for being in possession thereof with the intent to utter or pass them as true and genuine, the testimony of any person acquainted with the signature of the officer or agent authorized to sign the bills or notes of the bank of which said bill or note is alleged to be a counterfeit or similitude, or who has knowledge of the difference in appearance of the true and counterfeit bills or notes thereof, may be admitted to prove that any such bill or note is counterfeit.

Carter Code, sec. 86; Charlton Code, sec. 86.

Punishment of person convicted of second crime.

SEC. 1967. That if any person, having been convicted of any crime defined in any of the preceding sections of this chapter, shall afterwards be convicted of the same or any other crime so defined, such person shall be punished by imprisonment not less than the longest term mentioned in the section under which he may be indicted and tried.

Carter Code, sec. 87; Charlton Code, sec. 87.

Adulterating or selling adulterated gold dust.

SEC. 1968. That if any person shall mix or adulterate any gold dust with any metal or coin found of less value than such gold dust, with intent to pass or sell or in any way dispose of such gold dust, so mixed or adulterated, as genuine, or shall pass, sell, or otherwise dispose of or cause to be sold, passed, or otherwise disposed of, or shall attempt to pass, sell, or in any way dispose of, as genuine and pure, any gold dust so mixed or adulterated, knowing the same to be so mixed or adulterated, he shall be imprisoned in the penitentiary not less than one year nor more than five years.

Carter Code, sec. 88; Charlton Code, sec. 88.

Possession of adulterated gold dust.

SEC. 1969. That if any person shall have any gold dust in his possession mixed or adulterated as described in section nineteen hundred and sixty-eight, knowing the same to be mixed or adulterated, with intent to pass or sell or in any wise dispose of the same as pure and genuine, or to cause the same to be sold, passed, or in any way disposed of as pure and genuine gold dust, such person, upon conviction of such offense, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years.

Carter Code, sec. 89; Charlton Code, sec. 89.

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# CHAPTER FIVE.

## OFFENSES AGAINST PUBLIC JUSTICE.


Sec.
1970. Perjury and subornation of perjury.
1971. Punishment of perjury and subornation.
1972. Inciting person to commit perjury.
1973. Bribing or offering to bribe officer.
1974. Officer receiving or agreeing to receive bribe.
1975. Judicial officer, definition of.
1976. Executive officer, definition of.
1977. Aiding to escape from prison or legal confinement.
1978. Same, punishment of.
1979. Officer suffering an escape or refusing to receive person committed to his custody.
1980. Rescue or aiding prisoner to escape from officer.
1981. Assault upon officer of penitentiary.
1982. Aiding escape from penitentiary.
1983. Assault upon officer by a person imprisoned in county jail.
1984. Aiding escape from county jail.
1985. Officer refusing or delaying to serve process.
1986. Compounding or concealing crime for reward.
1987. Neglecting or refusing to aid officer.
1988. Falsely assuming to be a magistrate or peace officer.
1989. Malfeasance or negligence in office.
1990. Destroying, secreting, or mutilating public records.


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Mar. 3, 1899.
30 Stat. L., 1266–1269.

Perjury and subornation of perjury.

SEC. 1970. That if any person authorized by law to take an oath or affirmation, or of whom an oath or affirmation shall be required by such law, shall willfully swear or affirm falsely in regard to any matter or thing concerning which any oath or affirmation is authorized or required, such person shall be deemed guilty of perjury; and if any person shall procure another to commit the crime of perjury, such person shall be deemed guilty of subornation of perjury.

Carter Code, sec. 90; Charlton Code, sec. 90.

State *v.* Kalyton (45 Pac. Rep., 756).
State *v.* Spencer (6 Or. Rep., 152).
State *v.* Witham (6 Or. Rep., 357).
State *v.* Wollrudge (78 Pac. Rep., 333).
State *v.* Smith (83 Pac. Rep., 865).
State *v.* Jewett (85 Pac. Rep., 994).
State *v.* Luper (95 Pac. Rep., 811).

NOTE.—As to perjury under law regulating proof of labor on mining claims, see sec. 162, chap. 10, Title IV. (Act Mar. 2, 1907, 34 Stat. L., 1243.)

As to perjury under election law, see sec. 401, chap. 2, Title XI, Political Code. (Act May 7, 1906, 34 Stat. L., 159.)

Punishment of perjury and subornation.

SEC. 1971. That every person convicted of the crime of perjury, committed on the trial of or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than two or [1] more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding in a court of justice other than such criminal action, shall be punished by imprisonment in the penitentiary not less than three nor more than ten years; and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Carter Code, sec. 91; Charlton Code, sec. 91.

Inciting person to commit perjury.

SEC. 1972. That if any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Carter Code, sec. 92; Charlton Code, sec. 92.

Bribing or offering to bribe officer.

SEC. 1973. That if any person shall corruptly give, offer, or promise to give any gift, gratuity, valuable consideration, or thing whatever, or shall corruptly promise to do or cause to be done any act beneficial to any judicial or executive officer, with intent to influence the vote, opinion, decision, judgment, or other official conduct of such officer in any matter, question, duty, cause, or proceeding which then is or by law may come or be brought before such officer, or with intent to influence such officer to act in his official capacity in a particular manner so as to produce or prevent any particular result, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

Carter Code, sec. 93; Charlton Code, sec. 93.

Officer receiving or agreeing to receive bribe.

SEC. 1974. That if any judicial or executive officer shall corruptly accept or receive any gift, gratuity, valuable consideration, or thing whatever, or any promise thereof, or any promise to do or cause to be done any act beneficial to such officer, with the understanding or agreement, express or implied, that such officer will give his vote, opinion, decision, or judgment in a particular manner in any matter, question, duty, cause, or proceeding which then is or may by law come or be brought before such officer, or with the understanding or

[1] Presumably meant "nor."

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agreement that such officer will in his official capacity act in a particular manner, or so as to produce or prevent any particular result, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than five nor more than fifteen years.

Carter Code, sec. 94; Charlton Code, sec. 94.

Judicial officer, definition of.

SEC. 1975. That every person authorized to act as a judge in a court of justice; every person summoned as a juror in any court of justice, or upon any inquest, or before any officer, from the time he is so summoned; and every referee, umpire, or arbitrator, from the time of his appointment, shall be held and deemed to be a judicial officer within the meaning of sections nineteen hundred and seventy-three and nineteen hundred and seventy-four, and for the purposes therein expressed.

Carter Code, sec. 95; Charlton Code, sec. 95.

Executive officer, definition of.

SEC. 1976. That every officer of said District, or of any county, town, or other municipal or public corporation therein, not included in the definition of judicial officers, as defined in section nineteen hundred and seventy-five, from the time of his election or appointment, shall be held and deemed to be an executive officer within the meaning of sections nineteen hundred and seventy-three and nineteen hundred and seventy-four, and for the purposes therein expressed.

Carter Code, sec. 96; Charlton Code, sec. 96.

Aiding to escape from prison or legal confinement.

SEC. 1977. That if any person shall convey into or about the yard or grounds of any penitentiary, jail, house of correction, or other place whatever for the confinement of persons upon any warrant, order, or other legal process, any disguise, material, instrument, tool, weapon, or other thing adapted to or useful in aiding any person or prisoner there committed or detained to escape, with intent to effect or facilitate the escape of such person or prisoner, or shall by any means whatever aid or assist any such person or prisoner in an attempt to escape, whether such escape be effected or attempted or not, such person, upon conviction thereof, shall be punished as in the following section provided.

Carter Code, sec. 97; Charlton Code, sec. 97.
State *v.* Daley (70 Pac. Rep., 706).

Same, punishment of.

SEC. 1978. That if the person whose escape was attempted or effected was committed or detained upon a charge or conviction of a crime punishable with death or imprisonment for life, the punishment therefor shall be imprisonment in the penitentiary not less than ten nor more than twenty years; but if the person whose escape was attempted or effected was committed or detained upon a charge or conviction of a crime not so punishable, the punishment therefor shall be the same as that provided by law for the crime with which such person was charged or convicted; and in case the person whose escape was intended or effected was in custody or confinement upon civil process, or otherwise than upon a charge or conviction of crime, the punishment therefor shall be imprisonment in the county jail not less than three months nor more than one year, or a fine not less than one hundred dollars nor more than five hundred dollars.

Carter Code, sec. 98; Charlton Code, sec. 98.

Officer suffering an escape or refusing to receive person committed to his custody.

SEC. 1979. That if any United States marshal, deputy marshal, jailer, or other officer shall voluntarily or through negligence suffer any person or prisoner committed to or in his custody to escape, or shall willfully refuse to receive into his custody any person or prisoner lawfully committed thereto, such United States marshal, deputy marshal, jailer, or other officer, upon conviction thereof, shall be punished by imprisonment not less than one year nor more than five

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years, and by a fine not less than two hundred dollars nor more than one thousand dollars.

Carter Code, sec. 99; Charlton Code, sec. 99.

Rescue or aiding prisoner to escape from officer.

SEC. 1980. That if any person shall rescue, or attempt to rescue, any prisoner from any officer or person having the lawful custody of such prisoner, or shall aid or assist any prisoner in escaping or attempting to escape from any officer or person having the lawful custody of such prisoner, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years, or by imprisonment in the county jail not less than three months nor more than one year.

Carter Code, sec. 100; Charlton Code, sec. 100.

Assault upon officer of penitentiary.

SEC. 1981. That if any person imprisoned in the penitentiary shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any superintendent, keeper, or assistant keeper of the penitentiary, or other officer or person having the charge or custody of such person so imprisoned, or if any person sentenced to the penitentiary shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any United States marshal, deputy marshal, or his assistants having the charge or custody of the person so sentenced, such person, upon conviction thereof, shall be punished by an additional imprisonment in the penitentiary of not less than three nor more than twenty years.

Carter Code, sec. 101; Charlton Code, sec. 101.
State *v.* Smith (1 Or. Rep., 205).

Aiding escape from penitentiary.

SEC. 1982. That if any person, with intent to effect or aid the escape of a person imprisoned in any penitentiary or sentenced to such imprisonment, shall assault any officer or person having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than fifteen years.

Carter Code, sec. 102; Charlton Code, sec. 102.

Assault upon officer by a person imprisoned in county jail.

SEC. 1983. That if any person imprisoned or sentenced to imprisonment in the county jail or any building, prison, or place used as or in lieu of a county jail shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any United States marshal, deputy marshal, jailer, or his assistants having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than ten nor more than twenty years.

Carter Code, sec. 103; Charlton Code, sec. 103.

Aiding escape from county jail.

SEC. 1984. That if any person, with intent to effect or aid the escape of a person imprisoned or sentenced to imprisonment as mentioned in the last preceding section, shall assault any United States marshal, deputy marshal, jailer, or his assistant having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three years nor more than ten years.

Carter Code, sec. 104; Charlton Code, sec. 104.

Officer refusing or delaying to serve process.

SEC. 1985. That if any officer authorized to serve process shall willfully and wrongfully refuse to execute any lawful process to him directed and delivered, requiring him to arrest or confine any person, or shall willfully and wrongfully omit or delay to execute such process, whereby such person shall escape and go at large, such officer, upon conviction thereof, shall be punished by imprisonment in the

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county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 105; Charlton Code, sec. 105.

Compounding or concealing crime for reward.

SEC. 1986. That if any person having knowledge of the commission of a crime shall accept or receive any gift, gratuity, valuable consideration, or thing whatever, or any promise thereof, or any promise to do or cause to be done any act beneficial to such person, with the understanding or agreement, expressed or implied, to compound or conceal such crime, or not to prosecute therefor or give evidence thereof, such person, upon conviction thereof, shall, if such crime be punishable with death or imprisonment for life, be punished by imprisonment in the penitentiary not less than one year nor more than five years; or, if such crime is not so punishable, by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Carter Code, sec. 106; Charlton Code, sec. 106.
State *v.* Ash (54 Pac. Rep., 184).

Neglecting or refusing to aid officer.

SEC. 1987. That if any person, being required by any peace officer or magistrate to assist him in the execution of his office, in the preservation of the peace, or the arrest of any person for a breach of the peace, or the service of any process, shall neglect or refuse to render such assistance, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than twenty-five dollars nor more than five hundred dollars.

Carter Code, sec. 107; Charlton Code, sec. 107.

Falsely assuming to be a magistrate or peace officer.

SEC. 1988. That if any person shall falsely assume to be a magistrate or peace officer, and shall take upon himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Carter Code, sec. 108; Charlton Code, sec. 108.

Malfeasance or negligence in office.

SEC. 1989. That if any officer of said District, or of any county, town, or other municipal or public corporation therein, other than the governor or judge of the district court, shall willfully and knowingly charge, take, or receive any fee or compensation, other than that authorized or permitted by law, for any official service or duty performed by such officer, or shall willfully neglect or refuse to perform any duty or service pertaining to his office, with intent to injure or defraud anyone, or shall willfully neglect or refuse to perform such duty or service to the injury of anyone, or the manifest hindrance or obstruction of public justice or business, whether such injury, hindrance, or obstruction was particularly intended or not, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by a fine not less than fifty nor more than five hundred dollars, or by dismissal from office with or without either or any of such punishments.

Carter Code, sec. 109; Charlton Code, sec. 109.

State *v.* Packard (4 Or. Rep., 157). | Jackson *v.* Siglin (10 Or. Rep., 97).
State *v.* Parham (4 Or. Rep., 189). |

Destroying, secreting, or mutilating public records.

SEC. 1990. That if any person, having the legal custody of any public record, book, paper, or writing, shall willfully destroy, secrete, or mutilate the same; or if any attorney shall willfully

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destroy, secrete, or mutilate any such record, book, paper, or writing, or shall wrongfully take the same from the person having the legal custody thereof, or having obtained possession of such record, book, paper, or writing lawfully, shall wrongfully refuse or neglect to return or produce the same when lawfully required or demanded so to do, such person or attorney, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Carter Code, sec. 110; Charlton Code, sec. 110.
Ex parte Tongue (43 Pac. Rep., 717).

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# CHAPTER SIX

## OFFENSES AGAINST THE PUBLIC PEACE.


Sec.
1991. Definition of riot and unlawful assembly.
1992. Punishment for participating in riot.
1993. Disturbance of the peace in towns and villages.
1994. Disturbing religious meetings.
1995. Disturbing other public meetings.
1996. Disorderly conduct before women.
1997. Carrying concealed weapons.
1998. Penalty for carrying concealed weapons.


Mar. 3, 1899.
30 Stat. L., 1269–1270.

Definition of riot and unlawful assembly.

SEC. 1991. That any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot. Whenever three or more persons assemble with intent, or with means and preparations, to do an unlawful act, which would be riot if actually committed, but do no act toward the commission thereof, or whenever such persons assemble without authority of law, and in such manner as is adapted to disturb the public peace or excite public alarm, or disguised in a manner to prevent them from being identified, such an assembly is an unlawful assembly.

Carter Code, sec. 111; Charlton Code, sec. 111.

State *v.* Ton Louey (8 Pac. Rep., 353). State *v.* Mizis (85 Pac. Rep., 611; 86 Pac. Rep., 361). State *v.* Seeley (94 Pac. Rep., 37). State *v.* Stephanus (99 Pac. Rep., 428). Christensen *v.* U. S. (151 Fed. Rep., 766; 81 C. C. A., 390).

NOTE.—See also chap. 36, Title XV, Code of Criminal Procedure.

Punishment for participating in riot.

SEC. 1992. That if any person shall be guilty of participating in any riot, such person, upon conviction thereof, shall be punished as follows:

First. If any felony or misdemeanor was committed in the course of such riot, such person shall be punished in the same manner as the principal in such crime;

Second. If such person carried at the time of such riot any species of dangerous weapon, or was disguised, or encouraged or solicited other persons who participated in the riots to acts of force or violence, such person shall be punished by imprisonment in the penitentiary not less than three nor more than fifteen years;

Third. In all other cases such person shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 112; Charlton Code, sec. 112.

State *v.* Mizis (86 Pac. Rep., 361). State *v.* Stephanus (99 Pac. Rep., 428). Christensen *v.* U. S. (151 Fed Rep., 766; 81 C. C. A., 390).

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Disturbance of the peace in towns and villages.

SEC. 1993. That if any person or persons shall, in any town or village in said District, willfully drive or ride any horse or mule upon any sidewalk therein, or shall willfully drive or ride any horse or mule through the streets thereof at a greater speed than six miles per hour, or shall use any obscene or profane language in any public place in such town or village to the disturbance or annoyance of any person or persons therein, such person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than five nor more than fifty dollars.

Carter Code, sec. 113; Charlton Code, sec. 113.

Disturbing religious meetings.

SEC. 1994. That if any person shall willfully disturb, interrupt, or disquiet any assembly or congregation of people met for religious worship, whether in a house or the open air, by either uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise within the place where such meeting is held, or so near it as to disturb the order and solemnity thereof, or by exposing for sale or gift any intoxicating liquors or drinks within two miles of the place where any such assembly or congregation shall be actually convened for religious worship, and in a place other than such as shall have been duly licensed therefor, and in which such person shall have usually resided and carried on such business, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than ten dollars nor more than two hundred dollars.

Carter Code, sec. 114; Charlton Code, sec. 114.

Disturbing other public meetings.

SEC. 1995. That if any person shall willfully disturb or break up any public meeting or assembly of people other than those mentioned in the section last preceding, lawfully met for a lawful purpose, whether such meeting or assembly be met in a house or in the open air, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than three months, or by fine not less than ten dollars nor more than one hundred dollars.

Carter Code, sec. 115; Charlton Code, sec. 115.

Disorderly conduct before women.

SEC. 1996. That if any person shall be guilty of disorderly conduct or of using obscene language before women, he shall, on conviction thereof, be fined in any sum not less than five nor more than twenty-five dollars.

Carter Code, sec. 116; Charlton Code, sec. 116.

Carrying concealed weapons.

SEC. 1997. That it shall be unlawful for any person to carry concealed about his person, in any manner whatever, any revolver, pistol, or other firearm, or knife (other than an ordinary pocket-knife), or any dirk or dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

Carter Code, sec. 117; Charlton Code, sec. 117.

Penalty for carrying concealed weapons.

SEC. 1998. That any person violating any of the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than one hundred days, or by both fine and imprisonment, in the discretion of the court. Nothing in this act shall be construed to apply to any marshal, constable, police, or other peace officer, whose duty it is to serve process or make arrests.

Carter Code, sec. 118; Charlton Code, sec. 118.

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# CHAPTER SEVEN.

## OFFENSES AGAINST MORALITY AND DECENCY.

Sec.
1999. Adultery.
2000. Action for adultery, when commenced; adultery by unmarried man.
2001. Cohabiting in a state of adultery or fornication.
2002. Polygamy.
2003. Seduction of chaste female.
2004. Indecent exposure and exhibition.
2005. Concealing death of child.
2006. Indictment of mother for murder of bastard.
2007. Keeping bawdyhouse.
2008. Common fame, evidence of bawdyhouse.
2009. Incest, definition and punishment of.
2010. Sodomy.
2011. Illegal disinterment.
2012. Injuring tombstones and trespassing on graveyards.
2013. Making roads through graveyards.
2014. Cruelty to animals.

Mar. 3, 1899.
30 Stat. L., 1271-1273.
Adultery.

SEC. 1999. That whoever, being married, shall voluntarily have sexual intercourse with a person other than the offender's husband or wife is guilty of adultery, and shall be fined not more than two hundred dollars or be imprisoned in the county jail not more than three months.

Carter Code, sec. 119; Charlton Code, sec. 119.

State *v.* Scott (42 Pac. Rep., 1).
State *v.* Isenhart (52 Pac. Rep., 569).
State *v.* Eggleston (77 Pac. Rep., 738).
State *v.* Young (96 Pac. Rep., 1067).
U. S. *v.* Cartier (148 Fed. Rep., 804; 78 C. C. A., 494; 3 Alaska Rep., 696).

"In this case the court held that in a complaint charging the offense of adultery by married person with a person other than the offender's husband or wife must aver that the accused was married at the date of its alleged commission."

Action for adultery, when commenced; adultery by an unmarried man.

SEC. 2000. That a prosecution for the crime of adultery shall be commenced within three years from the time of committing the crime. When the crime of adultery is committed between a married woman and an unmarried man, the man shall be deemed guilty of adultery also, and be punished accordingly.

Carter Code, sec. 120; Charlton Code, sec. 120.

Cohabiting in a state of adultery or fornication.

SEC. 2001. That whoever cohabits with another in a state of adultery or fornication shall be fined not more than five hundred dollars or imprisoned in the penitentiary not more than two years, or both.

Carter Code, sec. 121; Charlton Code, sec. 121.

Polygamy.

SEC. 2002. That whoever, having a husband or wife, marries another, whether married or single, or simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be imprisoned in the penitentiary not more than seven years nor less than one year. This section does not extend to any person whose husband or wife has been continuously absent for five consecutive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person legally divorced from the bonds of matrimony.

Carter Code, sec. 122; Charlton Code, sec. 122.

Seduction of a chaste female.

SEC. 2003. That if any person, under promise of marriage, shall seduce and have illicit connection with any unmarried female of previous chaste character, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than five hundred nor more than one thousand dollars. A subse-



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quent marriage of the parties, or offer to marry in good faith, is a defense to a violation of this section.

Carter Code, sec. 123. Charlton Code, sec. 123.

State *v.* Wise (50 Pac. Rep., 800). State *v.* Adams (35 Pac. Rep., 36; 22 L. R. A., 840). State *v.* Martin (83 Pac. Rep., 849).

Indecent exposure and exhibition.

SEC. 2004. That if any person shall willfully and lewdly expose his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby, or shall take any part in any model artist exhibition, or make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite vicious or lewd thoughts or acts, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 124; Charlton Code, sec. 124.

Concealing death of child.

SEC. 2005. That if any woman shall conceal the death of any issue of her body, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, such woman, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year.

Carter Code, sec. 125; Charlton Code, sec. 125.

Indictment of mother for murder of bastard.

SEC. 2006. That when a woman is indicted for the murder of her bastard infant, she may also be charged in the same indictment with the crime defined in the last preceding section, and if she shall be found not guilty of the charge of murder she may be found guilty of the crime defined in such section, and punished accordingly.

Carter Code, sec. 126; Charlton Code, sec. 126.

Keeping bawdy-house.

SEC. 2007. That if any person shall keep or set up a house of ill fame, brothel, or bawdyhouse for the purpose of prostitution, fornication, or lewdness, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Carter Code, sec. 127; Charlton Code, sec. 127.

Wong *v.* Astoria (11 Pac. Rep., 295). State *v.* McGinnis (108 Pac. Rep., 132). Rosencranz *v.* U. S. (155 Fed. Rep., 38).

Common fame evidence of bawdy-house.

SEC. 2008. That in all prosecutions for the crime defined in the section last preceding, common fame shall be competent evidence in support of the indictment; and whenever any lessee or occupant of any house shall be convicted of any such crime, the lease or contract for the hiring or occupancy of such house shall, at the option of the lessor or owner, become void, and such lessor or owner shall thereupon be entitled to recover the possession of such premises as in the case of a tenant holding over after the expiration of his time.

Carter Code, sec. 128; Charlton Code, sec. 128.

Wilson *v.* Maddock (5 Or. Rep., 482). Botts *v.* U. S. (155 Fed. Rep., 50; 83 C. C. A., 646). Hall *v.* U. S. (155 Fed. Rep., 52; 84 C. C. A., 215). State *v.* McGinnis (108 Pac. Rep., 132).

NOTE.—In case (Botts *v.* U. S. supra) the court held, although above section expressly makes common fame competent evidence in support of an indictment for keeping a bawdyhouse, such evidence alone is not sufficient proof to warrant a conviction, but there must be some evidence that the house was in fact kept and used therefor.

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Incest, definition and punishment of.

SEC. 2009. That if any person related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and on conviction thereof shall be punished by imprisonment in the penitentiary not less than three years and not more than fifteen years.

Carter Code, sec. 129; Charlton Code, sec. 129.

Sodomy.

SEC. 2010. That if any person shall commit sodomy, or the crime against nature, either with mankind or beast, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years.

Carter Code, sec. 130; Charlton Code, sec. 130.

Illegal disinterment.

SEC. 2011. That if any person shall willfully and wrongfully dig up, disinter, remove, or convey away any human body, or the remains thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than three months nor more than one year.

Carter Code, sec. 131; Charlton Code, sec. 131.

State *v.* Magone (56 Pac. Rep., 648). | State *v.* Armstrong (73 Pac. Rep., 1022).

Injuring tombstones and trespassing on graveyards.

SEC. 2012. That any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone, or other structure in any cemetery, or any fence, railing, or other work for the protection or ornament of a cemetery, or tomb, monument, or gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall willfully destroy, cut, or break, or injure any tree, shrub, or plant within the limits of a cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not less than five dollars nor more than five hundred dollars, and imprisonment in the county jail for a term not less than one nor more than thirty days, according to the nature and aggravation of the offense, and such offender shall also be liable in an action of trespass to pay all such damages as have been occasioned by his unlawful act or acts.

Carter Code, sec. 132; Charlton Code, sec. 132.

Making roads through graveyards.

SEC. 2013. That if any person other than an officer on lawful business shall, without authority specially granted by law, or without the authority or consent of the proprietor or owner, open or make any highway, street, road, railway, macadamized road, or other thing in the nature of a public easement, over, in, through, or upon any inclosure or yard used for the burial of the dead, or shall begin to open or make any such public easement over, in, through, or upon any such inclosure or yard, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Carter Code, sec. 133; Charlton Code, sec. 133.

Cruelty to animals.

SEC. 2014. That if any person shall cruelly beat or torture any animal, whether belonging to himself or another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than ten nor more than thirty days, or by fine not less than five nor more than fifty dollars.

Carter Code, sec. 134; Charlton Code, sec. 134.

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# CHAPTER EIGHT.

## OFFENSES AGAINST PUBLIC POLICY.


Sec.
2015. Setting up or promoting lotteries.
2016. Selling lottery tickets.
2017. Advertising lottery tickets.
2018. Selling tickets in fictitious lotteries.
2019. When defendant to prove existence of lottery.
2020. Second conviction.
2021. Profanation of Sunday.
2022. Selling liquor to Indians.
2023. Suffering vicious animals to run at large.
2024. Taking female under sixteen years of age without consent of parents.
2025. Disposing of opium other than to druggists.
2026. Selling opium.
2027. "Opium den," defined.
2028. Frequenting opium den.
2029. Penalty for violating above sections.
2030. General reputation as evidence.
2031. Definition and punishment of vagrancy.
2032. Gambling.


Mar. 3, 1899.

30 Stat. L., 1273–1275.

Setting up or promoting lotteries.

SEC. 2015. That if any person shall promote or set up any lottery for money or other valuable thing, or shall dispose of any property of value, real or personal, by way or means of lottery, or shall aid or be in any way concerned in setting up, managing, or drawing such lottery, or shall in any house, shop, boat, shed, or building owned or occupied by him or under his control, knowingly permit or suffer the setting up, management, or drawing of any such lottery, or the sale of any lottery tickets, share of a ticket, or any writing, token, or other device purporting or intended to entitle the holder or bearer thereof, or any other person, to any prize or interest or share thereof, to be drawn in any lottery, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than one thousand dollars.

Carter Code, sec. 135; Charlton Code, sec. 135.
Quatsoe *v.* Eggleston (71 Pac. Rep., 66).

Selling lottery tickets.

SEC. 2016. That if any person shall sell, either for himself or another, or shall offer for sale, or shall have in his possession with intent to sell or offer for sale, or to exchange or negotiate, a ticket or share of a ticket in any such lottery, or any writing, token, or other device as is mentioned in the section last preceding, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Carter Code, sec. 136; Charlton Code, sec. 136.

Advertising lottery tickets.

SEC. 2017. That if any persons shall advertise any lottery ticket or share in such ticket, or any writing, token, or other device as is mentioned in section two thousand and eighteen, for sale, either for himself or another, or shall in any way invite or entice, or attempt to invite or entice, another to purchase or receive the same, or shall set up or exhibit any sign, symbol, or any emblematic or other representation of a lottery, where such ticket, share thereof, writing, token, or other device can be purchased or obtained, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by a fine not less than twenty dollars nor more than two hundred dollars.

Carter Code, sec. 137; Charlton Code, sec. 137.

Selling tickets in fictitious lotteries.

SEC. 2018. That if any person shall make or sell or offer for sale, or have in his possession with intent to sell, exchange, or negotiate, either

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for himself or another, any false or fictitious lottery ticket or share thereof, or any writing, token, or other device as is mentioned in section two thousand and fifteen, or any ticket or share thereof in any pretended or fictitious lottery, knowing the same to be false or fictitious, or shall receive any money or other thing of value for any such ticket or share thereof, or for any such writing, token, or other device, purporting that the owner, holder, or bearer thereof shall be entitled to receive any prize or any share of any prize, or anything of value that may be drawn in such lottery, knowing the same to be false or fictitious, such person, upon conviction thereof, shall be punished by imprisonment in the pentitentiary not less than one year nor more than three years.

Carter Code, sec. 138; Charlton Code, sec. 138.

When defendant to prove existence of lottery.

SEC. 2019. That upon the trial of an indictment for any of the crimes defined in the section last preceding, any ticket or share of a ticket, or any writing, token, or other device therein mentioned which the defendant shall have made, sold, or offered for sale, or shall have had in his possession with intent to sell, or for which he shall have received any money or other valuable thing, shall be deemed to be false, spurious, or fictitious, unless such defendant shall prove the same to be true and genuine and to have been duly issued by authority of law, and that such lottery was at the time existing and undrawn, and that such ticket or share thereof, or writing, token, or other device was issued by lawful authority and binding upon the person who issued the same.

Carter Code, sec. 139; Charlton Code, sec. 139.

Second conviction.

SEC. 2020. That if any person, having been convicted of a crime defined in sections two thousand and fifteen and two thousand and sixteen, shall afterwards be convicted of the same or any other crime therein defined, such person shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Carter Code, sec. 140; Charlton Code, sec. 140.

Profanation of Sunday.

SEC. 2021. That if any person shall keep open any store, shop, grocery, ball alley, billiard room, or tippling house, for purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person, upon conviction thereof, shall be punished by a fine not less than five nor more than fifty dollars: *Provided*, That the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery-stable keepers, barbers, butchers, and bakers, and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of fact for the jury to determine, when the offense is tried by jury.

*Proviso.* Drug stores, etc., excepted.

Carter Code, sec. 141; Charlton Code, sec. 141.

Valentine *v.* Roberts (1 Alaska Rep., 539). Johnson *v.* The Cyane (1 Saw. Rep., 150; 1 Alaska Rep., 826). Corvallis *v.* Carlisle (10 Or. Rep., 139). Cranor *v.* City of Albany (71 Pac. Rep., 1042).

Amended February 6, 1909. 35 Stat. L., 603. Liquors, intoxicating extracts, etc., prohibited to Indians. Penalty.

SEC. 2022. That if any person shall, without the authority of the United States, or some authorized officer thereof, sell, barter, or give to any Indian or half-breed who lives and associates with Indians, any spirituous, malt, or vinous liquor or intoxicating extracts, such person shall be fined nor less than one hundred nor more than five hundred dollars or be imprisoned in the penitentiary for a term not to exceed two years.

Meaning of word "Indian."

That the term "Indian" in this act shall be construed to include the aboriginal races inhabiting Alaska when annexed to the United

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States, and their descendants of the whole or half blood, who have not become citizens of the United States.

That section nineteen hundred and fifty-five of the Revised Statutes of the United States and all that part of section fourteen of "An act providing a civil government for Alaska," approved May seventeenth, eighteen hundred and eighty-four, after the word "provided," is hereby repealed.

R. S. sec. 1955, p. 343, repealed. Vol. 23, p. 28, amended.

Amends Carter Code, sec. 142; Charlton Code, sec. 142.

In re Minook (2 Alaska Rep., 220). Shelp *v.* U. S. (81 Fed. Rep., 694: 26 C. C. A., 570; 1 Alaska Rep., 756). Nagle *v.* United States (191 Fed. Rep., 141).

Mar. 3, 1899.

30 Stat. L., 1273–1275.

Suffering vicious animals to run at large.

SEC. 2023. That if any person, being the owner or having the control of any dangerous or vicious animal, knowing such animal to be dangerous or vicious, shall willfully or negligently permit or suffer the same to be at large in any neighborhood or on any public highway, such person, upon conviction thereof, shall be punished by fine not less than ten nor more than fifty dollars.

Carter Code, sec. 143; Charlton Code, sec. 143.

Taking female under sixteen years of age without consent of parents.

SEC. 2024. That if any person shall for purposes of prostitution or marriage take away any female under the age of sixteen years from her father, mother, guardian, or other person having legal charge of her person, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than two years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Carter Code, sec. 144; Charlton Code, sec. 144.

Disposing of opium other than to druggists.

SEC. 2025. That it shall be unlawful to sell or give away opium, or any preparation of which opium is the principal medicinal agent, to any person except druggists and practicing physicians, except on the prescription of a practicing physician, written in the English or Latin language; and the druggist filling the prescription shall keep the same on file for one year subject to be inspected by any public officer of the district.

Carter Code, sec. 145; Charlton Code, sec. 145.

Selling opium.

SEC. 2026. That no person shall sell any opium, or preparation of which opium is the principal medicinal agent, to be smoked on or about the premises where sold.

Carter Code, sec. 146; Charlton Code ,sec. 146.

"Opium den" defined.

SEC. 2027. That any building where opium is sold for the purpose of being smoked on or about the premises, or where the same is smoked shall be considered an opium den.

Carter Code, sec. 147; Charlton Code, sec. 147.

Frequenting opium den.

SEC. 2028. That it shall be unlawful for any person to frequent any opium den for the purpose of purchasing or smoking opium, or any preparation in which opium is the principal medicinal agent.

Carter Code, sec. 148; Charlton Code, sec. 148.
State *v.* Sam (13 Pac. Rep., 303).

Penalty for violating above sections.

SEC. 2029. That any person violating any of the four sections last preceding shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than fifty dollars nor more than five hundred dollars.

Carter Code, sec. 149; Charlton Code, sec. 149.

General reputation as evidence.

SEC. 2030. That in a prosecution for any violation of the provisions of sections two thousand and twenty-six, two thousand and twenty-

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seven, and two thousand and twenty-eight general reputation shall be received in evidence to establish the character of any building as an opium den, and proof that any person frequents such den shall be prima facie evidence that such person frequents such den for the purpose of smoking opium.

Carter Code, sec. 150; Charlton Code, sec. 150.

Definition and punishment of vagrancy.

SEC. 2031. That all idle or dissolute persons who have no visible means of living, or lawful occupation or employment by which to earn a living; all able-bodied persons who shall be found begging the means of support in public places, or from house to house, or who shall procure a child or children so to do; all persons who live in houses of ill repute shall be deemed vagrants, and upon conviction thereof shall be fined not less than twenty dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten nor more than twenty-five days, or both, in the discretion of the court.

Carter Code, sec. 151; Charlton Code, sec. 151.

Gambling.

SEC. 2032. That each and every person who shall deal, play, or carry on, open or cause to be opened, or who shall conduct, either as owner, proprietor or employee, whether for hire or not, any game of faro, monte, roulette, rouge-et-noir, lansquenet, rondo, vingt-un, twenty-one, poker, draw poker, brag, bluff, thaw, craps, or any banking or other game played with cards, dice, or any other device, whether the same shall be played for money, checks, credit, or any other representative of value, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, and shall be imprisoned in the county jail until such fine and costs are paid: *Provided*, That such person so convicted shall be imprisoned one day for every two dollars of such fine and costs: *And provided further*, That such imprisonment shall not exceed one year.

*Provisos.*
Imprisonment one day for every two dollars fine.
Limit of imprisonment.

Carter Code, sec. 152; Charlton Code, sec. 152.

McGinley *v.* Cleary (2 Alaska Rep., 269). In this case the plaintiff was the proprietor of a saloon. He gambled with defendant therein with dice, and lost $1,800. To pay his loss he conveyed the premises in dispute. Upon a suit in equity to recover, the court held, that equity will not assist a gambler to recover losses at his own game."

Hornstein *v.* U. S. (155 Fed. Rep., 48; 83 C. C. A., 644; 3 Alaska Rep., 731). State *v.* Gitt Lee (6 Or. Rep., 426). State *v.* Man (2 Or. Rep., 238). State *v.* Light (21 Pac. Rep., 132). State *v.* McDaniel (26 Pac. Rep., 837). State *v.* Adams (26 Pac. Rep. 837).

## CHAPTER NINE.

### OFFENSES AGAINST PUBLIC CONVENIENCE.

Sec.
2033. Throwing ballast into navigable stream.
Sec.
2034. Injuring buoys or beacons.
2035. Tearing down posted notices.

Mar. 3, 1899.
30 Stat. L., 1275-1276.
Throwing ballast into navigable stream.

SEC. 2033. That if any person, whether he be an officer of a vessel or not, shall discharge the ballast of any vessel into the navigable portions or channels of any of the bays, harbors, or rivers of said District, or within the jurisdiction of said District, so as to injuriously affect such portions or channels of such bays, harbors, or rivers, or to obstruct the navigation thereof, such person, upon conviction thereof,

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shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Carter Code, sec. 153; Charlton Code, sec. 153.

Injuring buoys or beacons.

SEC. 2034. That any person or persons who shall moor any vessel or vessels of any kind or name whatsoever, or any boat, skiff, barge, scow, raft, or part of a raft, to any buoy or beacon placed in the navigable waters of the District, or in any bay, river, or arm of the sea bordering upon said District, by the authority of the United States Light-House Board, or shall in any manner hang on with any vessel, boat, skiff, barge, scow, raft, or part of a raft, to any such buoy or beacon, or shall willfully remove, damage, or destroy any such buoy or beacon, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in said District by authority of the United States Light-House Board, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Carter Code, sec. 154; Charlton Code, sec. 154.

Tearing down posted notices.

SEC. 2035. That if any person shall willfully tear down, alter, or deface any posted, written, or printed notice, posted or put up in pursuance of any law requiring or authorizing the same to be done, before the time for which such notice is given has expired, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than fifty dollars nor more than three hundred dollars.

Carter Code, sec. 155; Charlton Code, sec. 155.

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# CHAPTER TEN.

## OFFENSES AGAINST THE PUBLIC HEALTH.


| Sec. | | Sec. | |
|---|---|---|---|
| 2036. | Selling unwholesome provisions. | 2040. | Same subject. |
| 2037. | Adulterating provisions. | 2041. | Penalty. |
| 2038. | Adulterating drugs. | 2042. | Spreading dangerous disease. |
| 2039. | Polluting water used for domestic purposes. | 2043. | Selling poison without label. |


Mar. 3, 1899.
30 Stat. L., 1276–1277.
Selling unwholesome provisions.

SEC. 2036. That if any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Carter Code, sec. 156; Charlton Code, sec. 156.

Adulterating provisions.

SEC. 2037. That if any person shall adulterate, for the purpose of sale, any substance intended for meat or drink with any substance injurious to health, or shall sell or offer for sale any substance so intended, knowing the same to be so adulterated, such person, upon conviction thereof, shall be punished in the manner provided in the section last preceding.

Carter Code, sec. 157; Charlton Code, sec. 157.

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Adulterating drugs.

SEC. 2038. That if any person shall adulterate, for the purpose of sale, any drug or medicine in such manner as to render the same injurious to health, or shall knowingly sell or offer for sale any adulterated drug or medicine, such person, upon conviction thereof, shall be punished in the manner provided in section two thousand and thirty-six, and such adulterated drugs or medicines shall be forfeited and destroyed.

Carter Code, sec. 158; Charlton Code, sec. 158.

Polluting water used for domestic purposes.

SEC. 2039. That any person who shall put any sewage, drainage, or refuse, or polluting matter, as either by itself or in connection with other matter will corrupt or impair the quality of any well, spring, brook, creek, branch, or pond of water which is used or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

Carter Code, sec. 159; Charlton Code, sec. 159.

Same subject.

SEC. 2040. That any person who puts any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner not herein named befouls, pollutes, or impairs the quality of any spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

Carter Code, sec. 160; Charlton Code, sec. 160.

Penalty.

SEC. 2041. That any person violating the provisions of either of the two sections last preceding shall, upon conviction, be fined not less than ten nor more than fifty dollars, or be imprisoned not less than five nor more than twenty-five days, or by both fine and imprisonment.

Carter Code, sec. 161; Charlton Code, sec. 161.

Spreading dangerous disease.

SEC. 2042. That if any person shall inoculate himself or suffer himself to be inoculated, or shall inoculate another, with the smallpox or any other malignant or infectious disease, within said District, or, being so inoculated, shall come within said District with the intent to cause the prevalence or spread of such disease within said District, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years.

Carter Code, sec. 162; Charlton Code, sec. 162.

Selling poison without label.

SEC. 2043. That if any person shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or other poison, without having the word "poison" and the true name thereof in English written or printed upon a label attached to the vial, box, or parcel containing the same, such person, upon conviction thereof, shall be punished by a fine of not less than twenty nor more than one hundred dollars.

Carter Code, sec. 163; Charlton Code, sec. 163.

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## CHAPTER ELEVEN.

### OFFENSES CONCERNING THE TELEGRAPH, TELEPHONE, AND SO FORTH.


Sec.
2044. Refusing to transmit official dispatch in time of war, and so forth.
2045. Malicious injury to telegraph.
2046. Divulging or altering dispatch.
2047. Sending or delivering false dispatch.
2048. Using information contained in dispatch.
2049. Delaying or refusing to send dispatch.
2050. Opening or obtaining dispatch intended for another.
2051. Taking information from wire, etc.
2052. Bribing operator to disclose private message.


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Mar. 3, 1899.
30 Stat. L., 1277–1279.

Refusing to transmit official dispatch in time of war, etc.

SEC. 2044. That every telegraph company shall be bound, on application of any officer of said District or of the United States, in case of any war, insurrection, riot, or other civil commotion or resistance of public authority, for the prevention and punishment of crime, or for the arrest of persons suspected or charged therewith, to give to the communications of such officers immediate dispatch, at the price of ordinary communications of the same length; and if any officer, agent, operator, or employee of any such company shall refuse or willfully omit to transmit such communications as aforesaid, or shall designedly alter or falsify the same, for any purpose whatever, the person so offending shall be liable to indictment, and on conviction may be fined not more than one thousand dollars or imprisoned in jail not more than twelve months or both, at the discretion of the court.

Carter Code, sec. 164; Charlton Code, sec. 164.

Malicious injury to telegraph.

SEC. 2045. That if any person shall willfully and maliciously cut, break, or throw down any pole or any tree or other object used in any line of telegraph, telephone, or system for the transmission of light or power by use of electricity, or shall willfully and maliciously break, displace, or injure any insulator in use in any such line, or shall willfully and maliciously cut, break, or remove from its insulators any wire used for any of the purposes above enumerated, or shall, by the attachment of a ground wire, or by any other contrivance, willfully and maliciously destroy the insulation of such line, or interrupt the transmission of the electric current through the same, or shall in any other manner willfully and maliciously injure, molest, or destroy any property or materials appertaining to any such line, or belonging to any telegraph, telephone, electric light or power company, or shall willfully and maliciously interfere with the use of any telegraph, telephone, electric light or power line, or obstruct or postpone the transmission of any message over any telegraph or telephone line, or procure or advise any such injury, interference, or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court, and shall moreover be liable to the company whose property is injured or line obstructed in a sum equal to three times the amount of actual damages sustained thereby.

Carter Code, sec. 165; Charlton Code, sec. 165.

Divulging or altering dispatch.

SEC. 2046. That if any officer, agent, operator, clerk, or employee of any telegraph company, or any other person, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same was addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof, or shall willfully alter any such message by adding thereto or omitting therefrom any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That when numerals or words of number occur in any message the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affect its genuineness, force, or validity.

*Proviso.* Expressing numerals.

Carter Code, sec. 166; Charlton Code, sec. 166.

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Sending or delivering false dispatch.

SEC. 2047. That if any agent, operator, or employee in any telegraph office, or other person, shall, knowingly and willfully, send by telegraph, to any person or persons, any false or forged message, purporting to be from such telegraph office, or from any other person, or shall willfully deliver, or cause to be delivered, to any person any such message, falsely purporting to have been received by telegraph, or if any person or persons shall furnish or conspire to furnish, or cause to be furnished, to any such agent, operator, or employee, to be sent by telegraph, or to be so delivered, any such message, knowing the same to be false or forged, with the intention to deceive, injure, or defraud any individual, partnership, or corporation, or the public, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Carter Code, sec. 167; Charlton Code, sec 167.

Using information contained in dispatch.

SEC. 2048. That if any agent, operator, or employee in any telegraph office shall in any way use or appropriate any information derived by him from any private message or messages passing through his hands and addressed to any other person or persons, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or shall trade or speculate upon any such information so obtained, or in any manner turn or attempt to turn the same to his account, profit, or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court, and shall also be liable in treble damages to the party aggrieved for all loss or injury sustained by reason of such wrongful act.

Carter Code, sec. 168; Charlton Code, sec. 168.

Delaying or refusing to send dispatch.

SEC. 2049. That if any agent, operator, or employee in any telegraph office shall unreasonably and willfully refuse or neglect to send any message received at such office for transmission, or shall unreasonably or willfully postpone the same out of its order, or shall unreasonably and willfully refuse or neglect to deliver any message received by telegraph, the person so offending shall be deemed guilty of a misdemeanor, and may be punished by a fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That nothing herein contained shall be construed to require any message to be received, transmitted, or delivered unless the charges thereon shall have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the Government of the United States, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

*Proviso.* Payment of charges.

Carter Code, sec. 169; Charlton Code, sec. 169.

Opening of obtaining dispatch intended for another.

SEC. 2050. That if any person not connected with any telegraph office shall, without the authority or consent of the person or persons to whom the same may be directed, willfully or unlawfully open any sealed envelope inclosing a telegraph message, and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently represent any other person or persons, and thereby procure to be delivered to himself any telegraph message addressed to such other person or persons, with the intent

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to use, destroy, or detain the same from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable in damages to the party injured for all loss and damage sustained by reason of such wrongful act.

Carter Code, sec. 170; Charlton Code, sec. 170.

Taking information from wire, etc.

SEC. 2051. That if any person not connected with any telegraph company, shall, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently read or attempt to read any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or shall willfully and fraudulently or clandestinely learn or attempt to learn the contents or meaning of any message while the same is in any telegraph office, or is being received thereat, or is sent therefrom, or shall use or attempt to use, or communicate to others, any information so obtained by any person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Carter Code, sec. 171; Charlton Code, sec. 171.

Bribing operator to disclose private message.

SEC. 2052. That if any person shall, by the payment or promise of any bribe, inducement, or reward, procure or attempt to procure any telegraph agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or shall offer to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employee, or shall use or attempt to use any such information so obtained, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Carter Code, sec. 172; Charlton Code, sec. 172.

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# CHAPTER TWELVE.

## PROTECTION OF FUR-BEARING ANIMALS AND SALMON.


Sec.
2053. Killing of fur-bearing animals prohibited.
2054. Power to arrest persons and seize vessels.
2055. Remission of fines, etc.
2056. Pribilof Islands declared a special reservation.
2057. Killing of seal upon them prohibited, when.
2058. Restrictions on killing female or young seals, etc.
2059. Obstructions in streams preventing ascent of salmon prohibited.
2060. Methods and times of fishing regulated.
2061. Concerning grounds and close seasons.
2062. Inspectors.
2063. Punishment for violations.
2064. Protection of eggs of crane, wild duck, etc.


Amended Apr. 21, 1910. 36 Stat. L., 327. Killing seals and other fur-bearing animals in Alaska forbidden. Punishment.

SEC. 2053. No person shall kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal, within the limits of Alaska Territory or in the waters thereof; and every person guilty thereof shall, for each offense, be fined not less than two hundred nor more than one thousand dollars or imprisoned not more than six months, or both; and all vessels, their tackle, apparel, furniture, and cargo found

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engaged in violation of this section shall be forfeited; but the Secretary of Commerce and Labor shall have power to authorize the killing of any such mink, marten, sable, fur seal, or other fur-bearing animal under such regulations as he may prescribe; and it shall be the duty of the Secretary of Commerce and Labor to prevent the killing of any fur seal except as authorized by law and to provide for the execution of the provisions of this section until it is otherwise provided by law.

Permission by Secretary of Commerce and Labor.

Prevention of illegal killing.

Amends Carter Code, sec. 173; Charlton Code, sec. 173.

NOTE.—See Title VII, sec. 292.

SEC. 2054. That the collector and deputy collectors appointed for Alaska Territory, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest persons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the other laws extended over the Territory, and to keep and deliver the same to the marshal.

Mar. 3, 1899.
30 Stat. L., 1280.
Power to arrest persons and seize vessels.

Carter Code, sec. 174; Charlton Code, sec. 174.

SEC. 2055. That in all cases of fine, penalty, or forfeiture embraced in the act approved March third, seventeen hundred and ninety-seven, chapter thirteen, or mentioned in any act in addition to or amendatory of such act, that have occurred or may occur in the collection district of Alaska, the Secretary of the Treasury is authorized, if in his opinion the fine, penalty, or forfeiture was incurred without willful negligence or intention of fraud, to ascertain the facts in such manner and under such regulations as he may deem proper, without regard to the provisions of the act above referred to; and upon the facts so to be ascertained he may exercise all the power of remission conferred upon him by that act as fully as he might have done had such facts been ascertained under and according to the provisions of that act.

Remission of fines, etc.
Vol. 1, p. 506.
R. S., sec. 1958, p. 344.

Carter Code, sec. 175; Charlton Code, sec. 175.

SEC. 2056. The Pribilof Islands, including the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock, in Alaska, are declared a special reservation for government purposes; and until otherwise provided by law it shall be unlawful for any person to land or remain on any of those islands, except through stress of weather or like unavoidable cause or by the authority of the Secretary of Commerce and Labor; and any person found on any of those islands contrary to the provisions hereof shall be summarily removed and shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both fine and imprisonment; and it shall be the duty of the Secretary of Commerce and Labor to carry this section into effect.

Amended Apr. 21, 1910.
36 Stat. L., 327.
Pribilof Islands made a special reservation.
Landing, etc., on, unlawful.

Punishment.

Amends Carter Code, sec, 176; Charlton Code, 176.

NOTE.—See Title VII, sec. 293.

SEC. 2057. It shall be unlawful to kill any fur seal upon the Pribilof Islands or in the waters adjacent thereto, except under the authority of the Secretary of Commerce and Labor, and it shall be unlawful to kill such seals by the use of firearms or by other means tending to drive the seals away from those islands; but the natives of the islands shall have the privilege of killing such young seals as may be necessary for their own food and clothing, and also such old seals as may be required for their own clothing and for the manufacture of boats for their own use; and the killing in such cases shall be limited and controlled by such regulations as may be prescribed by the Secretary of Commerce and Labor.

Amended Apr. 21, 1910.
36 Stat. L., 327.
Killing of seal upon them prohibited, when.

Exception to natives.

Amends Carter Code, sec. 177; Charlton Code, sec. 177.

NOTE.—See Title VII, sec. 286.

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Amended Apr. 21, 1910. 36 Stat. L., 328. Restriction on female or young seals, etc. Punishment.

SEC. 2058. It shall be unlawful to kill any female seal or any seal less than one year old at any season of the year, except as above provided; and it shall also be unlawful to kill any seal in the waters adjacent to the Pribilof Islands, or on the beaches, cliffs, or rocks where they haul up from the sea to remain; and every person who violates the provisions of this or the preceding section shall be punished for each offense by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment not more than six months, or by both such fine and imprisonment; and all vessels, their tackle, apparel, and furniture, whose crews are found engaged in the violation of either this or the preceding section shall be forfeited to the United States.

Amends Carter Code, sec. 178; Charlton Code, sec. 178.

U. S. *v.* Japanese Schooner Kensei Maru (3 Alaska Rep., 627).

NOTE.—See Title VII, sec. 294.

Mar. 3, 1899. 30 Stat. L., 1280. Obstruction in streams preventing ascent of salmon prohibited. Vol. 29, p. 316.

SEC. 2059. That the erection of dams, barricades, fish wheels, fences, or any such fixed or stationary obstructions in any part of the rivers or streams of Alaska, or to fish for or catch salmon or salmon trout in any manner or by any means, with the purpose or result of preventing or impeding the ascent of salmon to their spawning ground, is hereby declared to be unlawful, and the Secretary of the Treasury is hereby authorized and directed to remove such obstructions and to establish and enforce such regulations and surveillance as may be necessary to insure that this prohibition and all other provisions of law relating to the salmon fisheries of Alaska are strictly complied with.

NOTE.—This section is inconsistent with the provisions of sec. 261 of this code, "Fish and fisheries," title VII, act of June 26, 1906 (34 Stat. L., 478), and is accordingly repealed.

Repeals Carter Code, sec. 179; Charlton Code, sec. 179.

Methods and times of fishing regulated.

SEC. 2060. That it shall be unlawful to fish, catch, or kill any salmon of any variety except with rod or spear above the tide waters of any creeks or rivers of less than five hundred feet width in the Territory of Alaska, except only for purposes of propagation, or to lay or set any drift net, set net, trap, pound net, or seine for any purpose across the tide waters of any river or stream for a distance of more than one-third of the width of such river, stream, or channel, or lay or set any seine or net within one hundred yards of any other net or seine which is being laid or set in said stream or channel, or to take, kill, or fish for salmon in any manner, or by any means, in any of the waters of the Territory of Alaska, either in the streams or tide waters, except Cook Inlet, Prince William Sound, Bering Sea, and the waters tributary thereto, from midnight on Friday of each week until six o'clock ante-meridian of the Sunday following; or to fish for or catch, or kill in any manner, or by any appliances except by rod or spear, any salmon in any stream of less than one hundred yards in width in the said Territory of Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week.

Repeals Carter Code, sec. 180; Charlton Code, sec. 180.

NOTE.—See secs. 262 and 263, Title VII, "Fish and fisheries," of this code (act of June 26, 1906, 34 Stat. L., 478), which repeals above section.

U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624, 625).

Spawning grounds and close seasons.

SEC. 2061. That the Secretary of the Treasury may, at his discretion, set aside any streams as spawning grounds, in which no fishing

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will be permitted; and when, in his judgment, the results of fishing operations on any stream indicate that the number of salmon taken is larger than the capacity of the stream to produce, he is authorized to establish weekly close seasons, to limit the duration of the fishing season, or to prohibit fishing entirely for one year or more, so as to permit salmon to increase: *Provided, however*, That such power shall be exercised only after all persons interested shall have been given a hearing, of which hearing due notice must be given by publication: *And provided further*, That it shall have been ascertained that the persons engaged in catching salmon do not maintain fish hatcheries of sufficient magnitude to keep such streams fully stocked.

Concerning grounds and closed seasons.

*Provisos.* Notice.

Hatcheries.

Repeals Carter Code, sec. 181; Charlton Code, sec. 181.

NOTE.—See sec. 264, Title VII, "Fish and fisheries," of this code (act of June 26, 1906, 34 Stat. L. 478), which repeals above section.

SEC. 2062. That to enforce the provisions of law herein and such regulations as the Secretary of the Treasury may establish in pursuance thereof, he is authorized and directed to appoint one inspector of fisheries, at a salary of one thousand eight hundred dollars per annum, and two assistant inspectors, at a salary of one thousand six hundred dollars each per annum; and he will annually submit to Congress estimates to cover the salaries and actual traveling expenses of the officers hereby authorized and for such other expenditures as may be necessary to carry out the provisions of the law herein.

Inspector.

Inspectors.

Repeals Carter Code, sec. 182; Charlton Code, sec. 182.

NOTE.—See sec. 270, Title VII, "Fish and fisheries," of this code (act of June 26, 1906, 34 Stat. L., 478), which repeals above section.

SEC. 2063. That any person violating the provisions of sections two thousand and fifty-nine, two thousand and sixty, and two thousand and sixty-one of this act or the regulations established in pursuance of section two thousand and sixty-two of this act shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term not exceeding ninety days, or both such fine and imprisonment, at the discretion of the court; and, further, in case of the violation of any of the provisions of section two thousand and fifty-nine, and conviction thereof, a further fine of two hundred and fifty dollars per diem will be imposed for each day that the obstruction or obstructions therein are maintained.

Punishment for violations.

Repeals Carter Code, sec. 183; Charlton Code, sec. 183.

NOTE.—See sec. 271, Title VII, "Fish and fisheries" (act of June 26, 1906, 34 Stat. L., 478), which repeals above section.

U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624, 625).

SEC. 2064. That no person shall break, take from the nest, or have in possession the eggs of any crane, wild duck, brant, or goose; nor shall any person transport or ship out of said Territory the eggs or the contents of the eggs of any crane, wild duck, brant, or goose; nor shall any person, common carrier or other transportation company carry or receive for shipment such eggs or the contents of said eggs, and any person or company who shall have in possession or receive for shipment or transportation any eggs or the contents of any eggs of the crane, wild duck, brant, or goose shall be guilty of a misdemeanor and upon conviction be punished as provided in this section. Any person or company violating the provisions of this section shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding six months.

Added June 6, 1900. 31 Stat. L., 332.

Protection of eggs of crane, wild duck, etc.

Charlton Code, p. 76.

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# CHAPTER THIRTEEN.

## MISCELLANEOUS PROVISIONS AND DEFINITION.


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2065. Division of crimes.
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Mar. 3, 1899.
30 Stat. L., 1282–1285.
Division of crimes.

SEC. 2065. That crimes are divided into felonies and misdemeanors. A felony is a crime punishable with death, or which is or may be punishable by imprisonment in the penitentiary. Every other crime is a misdemeanor.

Carter Code, sec. 184; Charlton Code, sec. 184.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 183). U. S. *v.* Waller (1 Saw), 701; 1 Alaska Rep., 755 Rep., U. S. v. Alaska Packers Assn. (1 Alaska Rep., 217). U. S. *v.* Ames Merch Co. (2 Alaska Rep., 75). U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 625).

Parties to crimes.

SEC. 2066. That the parties to crime are classified as—
First. Principals.
Second. Accessories.

Carter Code, sec. 185; Charlton Code, sec. 185.
Bird *v.* U. S. (23 Sup. Ct., 42; 1 Alaska Rep., 752).

Principals, who deemed such.

SEC. 2067. That all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, are principals, and to be tried and punished as such.

Carter Code, sec. 186; Charlton Code, sec. 186.

State *v.* Steeves (43 Pac. Rep., 947). State *v.* Kirk (10 Or. Rep., 505). State *v.* Branton (56 Pac. Rep., 267). State *v.* Moran (14 Pac. Rep., 419). State *v.* Hinkle (54 Pac. Rep., 155). State *v.* Carmody (91 Pac. Rep., 446). Rosencranz *v.* U. S. (155 Fed. Rep., 38; 83 C. C. A., 634; 3 Alaska Rep., 730).

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Accessories, who deemed such.

SEC. 2068. That all persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

Carter Code, sec. 187; Charlton Code, sec. 187.

No accessories in misdemeanors.

SEC. 2069. That in misdemeanors there are no accessories.

Carter Code, sec. 188; Charlton Code, sec. 188.
Rosencranz *v.* U. S. (155 Fed. Rep., 38; 83 C. C. A., 634, 3 Alaska Rep., 730).

Accessories, how punished.

SEC. 2070. That except in cases where a different punishment is prescribed by law, an accessory to a felony, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

Carter Code, sec. 189; Charlton Code, sec. 189.

Person not punishable for omission when performed by another.

SEC. 2071. That no person is punishable for an omission to perform an act where such act has been performed by another person acting in his behalf, and competent by law to perform it.

Carter Code, sec. 190; Charlton Code, sec. 190.

Misdemeanor, punishment for, when not otherwise prescribed.

SEC. 2072. That whenever, by any law relating to said district, an act is declared to be a misdemeanor, and no punishment is prescribed therefor, the person committing the same, upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not more than five hundred dollars.

Carter Code, sec. 191; Charlton Code, sec. 191.
State *v.* Gaunt (9 Pac. Rep., 55).

Attempt to commit crime, punishment of.

SEC. 2073. That if any person attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, such person, when no other provision is made by law for the punishment of such attempt, upon conviction thereof, shall be punished as follows:

First. If the crime so attempted be punishable by imprisonment in the penitentiary or county jail, the punishment for the attempt shall be by like imprisonment, as the case may be, for a term not more than half the longest period prescribed as a punishment for such crime.

Second. If the crime so attempted be punishable by fine, the punishment for the attempt shall be by fine not more than half the amount of the largest fine prescribed as a punishment for such crime.

Carter Code, sec. 192; Charlton Code, sec. 192.

U. S. *v.* Williams (2 Fed. Rep., 61; 1 Alaska Rep., 753). State *v.* Taylor (84 Pac. Rep., 82).

Preceding section, how construed.

SEC. 2074. That the section last preceding must not be construed to protect a person who, in attempting unsuccessfully to commit a crime, accomplishes another or different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Carter Code, sec. 193; Charlton Code, sec. 193.

Computation of sentences.

SEC. 2075. That when a person is sentenced to imprisonment in the penitentiary, his term of confinement therein commences from the day of his delivery at such prison to the proper officer thereof, and no time during which such person is voluntarily absent from such penitentiary can be estimated or counted as a part of the term for which such person was sentenced.

Carter Code, sec. 194; Charlton Code, sec. 194.



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Treatment of convicts.

SEC. 2076. That a judgment of imprisonment in the penitentiary need only specify the duration and place of such confinement, and thereafter the manner of the confinement and the treatment and employment of the person so sentenced shall be regulated and governed by whatever law may be in force prescribing the discipline of the penitentiary wherein he is confined and the treatment and employment of persons sentenced to confinement therein.

Carter Code, sec. 195; Charlton Code, sec. 195.

Judgment of imprisonment in penitentiary, effect of.

SEC. 2077. That a judgment of imprisonment in the penitentiary for any term less than for life suspends all civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of such imprisonment.

Carter Code, sec. 196; Charlton Code, sec. 196.
U. S. *v.* Powers & Robertson (1 Alaska Rep., 187).

Judgment of imprisonment for life.

SEC. 2078. That a person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead.

Carter Code, sec. 197; Charlton Code, sec. 197.

Person of a convict under the protection of law.

SEC. 2079. That the person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person not authorized by law is punishable in the same manner as if he was not convicted or sentenced.

Carter Code, sec. 198; Charlton Code, sec. 198.

Sentences to penitentiary, how executed.

SEC. 2080. That whenever, in pursuance of the provisions of this act, any person is sentenced to imprisonment in the penitentiary, such sentence may be executed by the confinement of such person in the building at Sitka, in said District, now used for that purpose, or in any other place of confinement within or without the said District that may be designated by the court, and his place of imprisonment may be changed at any time, and from time to time, upon the order of the Attorney General.

Carter Code, sec. 199; Charlton Code, sec. 199.

"Jail," definition of.

SEC. 2081. That whenever the words "jail" or "county jail" occur in this act, the same shall be held to mean any house, building, structure, ship, or vessel used or suitable for the confinement of persons serving sentences for crime or awaiting trial therefor.

Carter Code, sec. 200; Charlton Code, sec. 200.

Sentences to county jail, how executed.

SEC. 2082. That the commencement and termination of a sentence of imprisonment in a county jail is to be ascertained by the rule prescribed in section two thousand and seventy-five of this title, and the manner of such confinement and the treatment of the persons so sentenced shall be governed by whatever law may be in force prescribing the discipline of county jails: *Provided*, That the United States marshal for said District may, under such regulations as the Attorney General may prescribe, employ or cause to be employed upon public works any or all persons sentenced to imprisonment in the jails or the penitentiary within said District: *And provided further*, That for the purpose of satisfying any judgment which may be given against a prisoner for any fine, or for the costs and disbursements in the proceedings against him, such prisoner shall be credited with two dollars for every day's labor performed by him in pursuance hereof.

*Provisos.*
Employment of prisoners on public works.

Credit on fine for labor.

Carter Code, sec. 201; Charlton Code, sec. 201.

Evidence given by a person may be used against him on a prosecution for perjury.

SEC. 2083. That any section of this act which declares that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding does not forbid

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such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed by such person in such examination.

Carter Code, sec. 202; Charlton Code, sec. 202.

Conviction of crime not to work forfeiture of property.

SEC. 2084. That no conviction of any person for crime works any forfeiture of any property, except in cases where the same is expressly provided by law; but in all cases of the commission or attempt to commit a felony the United States has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against him for any fine on account thereof, and for the costs and disbursements in the proceedings against him for such crime.

Carter Code, sec. 203; Charlton Code, sec. 203.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 180, 183). Whitley *v.* Murphy (5 Or. Rep., 328). State *v.* O'Neal (7 Or. Rep., 141). State *v.* Munds (7 Or. Rep., 80). Knott *v.* Shaw (5 Or. Rep., 482).

Court to ascertain and impose punishments.

SEC. 2085. That the several sections of this act which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed; and whenever such punishment is left undetermined between certain limits or kinds, to determine the punishment to be inflicted in a particular case.

Carter Code, sec. 204; Charlton Code, sec. 204.

Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 729). In re Burkell (2 Alaska Rep., 108). U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624).

In prosecution for libel, truth may be given in evidence.

SEC. 2086. That in all criminal prosecutions for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and justifiable ends, the defendant must be found not guilty.

Carter Code, sec. 205; Charlton Code, sec. 205.

State *v.* Putnam (100 Pac. Rep., 2).

Presumption in case of injurious publication.

SEC. 2087. That an injurious publication is presumed to have been malicious if no justifiable end or good motive is shown for making it.

Carter Code, sec. 206; Charlton Code, sec. 206.

State *v.* Mason (38 Pac. Rep., 130; 26 L. R. A., 779).

"Dwelling house," definition of, in relation to arson.

SEC. 2088. That any building is deemed a "dwelling house" within the meaning of the sections of this act defining the crime of arson any part of which has usually been occupied by any person lodging therein.

Carter Code, sec. 207; Charlton Code, sec. 207.

NOTE.—See sec. 1911.

"Dwelling house," definition of, in relation to burglary.

SEC. 2089. That any building is deemed a "dwelling house" within the meaning of the sections of this act defining the crime of burglary any part of which has usually been occupied by any person lodging therein, and any structure joined to or immediately connected with such building.

Carter Code, sec. 208; Charlton Code, sec. 208.

NOTE.—See sec. 1917.

Certain terms presumed to be used in a certain sense.

SEC. 2090. That whenever the terms mentioned in the following sections are employed in this act they are deemed to be employed in the senses hereafter affixed to them, except when a different sense plainly appears.

Carter Code, sec. 209; Charlton Code, sec. 209.

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"Signature," what it includes.

SEC. 2091. That the term "signature" includes any name, mark, or sign written with intent to authenticate any instrument or writing.

Carter Code, sec. 210; Charlton Code, sec. 210.

"Writing" includes printing.

SEC. 2092. That the term "writing" includes printing.

Carter Code, sec. 211; Charlton Code, sec. 211.

"Property" includes both real and personal.

SEC. 2093. That the term "property" includes both real and personal property.

Carter Code, sec. 212; Charlton Code, sec. 212.

The term "person," what it includes.

SEC. 2094. That the word "person" includes corporations as well as natural persons; and where such word is used to designate the party whose property may be the subject of a crime, it includes said District, or any State, Government, or country which may lawfully own any property in said District, and all municipal or public corporations and private corporations, as well as individuals.

Carter Code, sec. 213; Charlton Code, sec. 213.

U. S. *v.* Alaska Packers Assn. (1 Alaska Rep., 217). U. S. *v.* Yakutat & Southern R. Co. (2 Alaska Rep., 628). U. S. *v.* Ames Merch. Co. (2 Alaska Rep., 74).

The singular number includes the plural.

SEC. 2095. That the singular number includes the plural, and the plural the singular.

Carter Code, sec. 214; Charlton Code, sec. 214.

NOTE.—See sec. 797, Title XII, Civil Code.

Masculine gender, what it comprehends.

SEC. 2096. That words used in the masculine gender comprehend as well the feminine and the neuter.

Carter Code, sec. 215; Charlton Code, sec. 215.

NOTE.—See sec. 797, Title XII, Civil Code.

Intent to defraud, what sufficient.

SEC. 2097. That whenever, by any provision of this act, an intent to defraud is necessary to constitute a crime, it is sufficient if an intent appears to defraud any person, body politic, or corporation whatever.

Carter Code, sec. 216; Charlton Code, sec. 216.

Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 758).

Criminal prosecution not to exclude other remedy or penalty.

SEC. 2098. That the omission to specify or affirm in this act any liability to any damages, penalty, or forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Carter Code, sec. 217; Charlton Code, sec. 217.

Common law of England adopted.

SEC. 2099. The common law of England as adopted and understood in the United States shall be in force in said District, except as modified by this act.

Carter Code, sec. 218; Charlton Code, sec. 218.

Valentine *v.* Roberts (1 Alaska Rep., 536, 541). In re Burkell (2 Alaska Rep. 117). McFarland v. Alaska Perseverance Min. Co. (3 Alaska Rep., 321, 322, 329).

Pending proceedings unaffected, etc.

SEC. 2100. That nothing herein contained shall apply to or in any way affect any proceeding or indictment now found or pending or that may be found for any offense committed before the passage of this act.

Carter Code, sec. 219; Charlton Code, sec. 219.

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# CHAPTER FOURTEEN.

## WHITE SLAVE TRAFFIC ACT.

Sec.
2101. Application of interstate and foreign commerce to transportation.
2102. Transporting, etc., females for immoral practices a felony, furnishing tickets, etc., included.
2103. Inducing, etc., transportation of women for immoral purposes a felony.
2104. Inducing, etc., interstate transportation of females under 18 for immoral practices a felony.
2105. Jurisdiction of courts.
2106. Alien prostitutes, information bureau established.
2107. Alaska included in territory.
2108. Title.

June 25, 1910.
36 Stat. L., 825.
White slave traffic act.

Application of interstate and foreign commerce to transportation.

SEC. 2101. That the term "interstate commerce," as used in this act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

Ibid.
Transporting, etc., females for immoral practices a felony.

SEC. 2102. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign Commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

Furnishing tickets, etc., included.

Punishment.

Ibid.
Inducing, etc., transportation of women for immoral purposes a felony.

SEC. 2103. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five

Punishment.

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years, or by both such fine and imprisonment, in the discretion of the court.

Ibid.
Inducing, etc., interstate transportation of females under 18 for immoral practices a felony

SEC. 2104. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

Punishment.

Ibid.
Jurisdiction of courts

SEC. 2105. That any violation of any of the above sections two thousand one hundred and two, two thousand one hundred and three, and two thousand one hundred and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections.

Ibid.
Alien prostitutes. Information bureau established.

SEC. 2106. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purposes of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July twenty-fifth, nineteen hundred and two, for submission to their respective governments by the delegates of various powers represented at the Paris conference and confirmed by a formal agreement signed at Paris on May eighteenth, nineteen hundred and four, and adhered to by the United States on June sixth, nineteen hundred and eight, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight, the Commissioner General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this act to the persons, respectively, making and filing them.

Vol. 35, p. 1981.

Authority of Commissioner General of Immigration.

Statements required.

Statements of alien inmates to be made by keepers of houses of prostitution.
*Ante*, p. 264.

Every person who shall keep, maintain, control, support or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commisioner General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this

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country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner General of Immigration, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than two thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

Failure to file statement a misdemeanor.

Punishment.

In any prosecution brought under this section, if it appear that any such statement required is not on file in the office of the Commissioner General of Immigration, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, as herein required, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing, concerning which he may truthfully report in such statement, as required by the provisions of this section.

Presumption if statement not on file.

Immunity for truthful statements.

Ibid.

SEC. 2107. That the term "Territory," as used in this act, shall include the District of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person," as used in this act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association as well as that of the person himself.

Alaska, insular possessions and Canal Zone included in "Territory."

"Persons," construed.

Corporations, etc., responsible for agents, etc.

Ibid.

SEC. 2108. That this act shall be known and referred to as the "White-slave traffic act."

Title.

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## CHAPTER FIFTEEN.

Sec.
2109. To protect the dignity and honor of the uniform of the United States.

Mar. 1, 1911.
36 Stat. L., 963.

Uniforms of United States.

Punishment for discriminations by theaters, etc., against wearers of.

SEC. 2109. That hereafter no proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, the District of Alaska or insular possession of the United States, shall make, or cause to be made, any discrimination against any person lawfully wearing the uniform of the Army, Navy, Revenue-Cutter Service or Marine Corps of the United States because of that uniform, and any person making, or causing to be made, such discrimination shall be guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars.

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["Old" refers to Carter's compilation and Charlton's compilation; "new" refers to this compilation.]

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# TITLE XV.

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# CHAPTER ONE.

## PRELIMINARY PROVISIONS.


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2110. Crimes and offenses, how prosecuted.
2111. Definition of a crime or public offense.
2112. Felonies, how prosecuted.
2113. Criminal action defined.
2114. Parties to a criminal action.


Mar. 3, 1899.
30 Stat. L., 1285.
Crimes and offenses, how prosecuted.

SEC. 2110. That proceedings for the punishment and prevention of the crimes defined in Title XIV of this act shall be conducted in the manner herein provided.

Carter Code, sec. 1; Charlton Code, sec. 1.

Definition of a crime or public offense.

SEC. 2111. That a crime or public offense is an act or omission forbidden by law, and punishable, upon conviction, by either of the following punishments:

First. Death;
Second. Imprisonment;
Third. Fine;
Fourth. Removal from office;
Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit.

Carter Code, sec. 2; Charlton Code, sec. 2.

U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 626).

Baxter *v.* State (88 Pac. Rep., 677).

Felonies, how prosecuted.

SEC. 2112. That no person can be tried for the commission of a felony but upon the indictment of a grand jury.

Carter Code, sec. 3; Charlton Code, sec. 3.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 183).

U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 600).

Criminal action defined.

SEC. 2113. That the proceeding by which a person is tried and punished for the commission of a crime is known in this act as a criminal action.

Carter Code, sec. 4; Charlton Code, sec. 4.

Griggs *v.* U. S. (158 Fed. Rep., 572).

Parties to a criminal action.

SEC. 2114. That in a criminal action in the District of Alaska the United States is the plaintiff and the person prosecuted is the defendant.

Carter Code, sec. 5; Charlton Code, sec. 5.

Griggs *v.* U. S. (158 Fed. Rep., 572).

# CHAPTER TWO.

## OF THE TIME OF COMMENCEMENT OF CRIMINAL ACTIONS.


Sec.
2115. Criminal actions, when commenced.


Mar. 3, 1899.
30 Stat. L., 1285.
Criminal actions, when commenced.

SEC. 2115. That criminal action must be commenced within the periods prescribed in the laws of the United States now in force or that may be hereinafter enacted.

Carter Code, sec. 6; Charlton Code, sec. 6.

Van Schuyver *v.* Hartman (1 Alaska Rep., 431).



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# CHAPTER THREE.

## OF THE JURISDICTION AND PLACE OF CRIMINAL ACTIONS.

Sec.
2116. When crime commenced without, but consummated within, this District.
2117. Murder or manslaughter committed by means used without the District.
2118. When conviction or acquittal in another jurisdiction is a bar.

Mar. 3, 1899.
30 Stat. L., 1285.

When crime commenced without, but consummated within, this District.

SEC. 2116. That when the commission of a crime commenced without said District is consummated within its boundaries, the defendant is liable to punishment therefor in said District though he were out of the District at the time of the commission of the crime charged, provided he consummated it in said District, through the intervention of an innocent or guilty agent, or by any means proceeding directly from himself.

Carter Code, sec. 7; Charlton Code, sec. 7.

State *v.* Barnett (14 Pac. Rep., 737). *Jurisdiction*: Rosecranz *v.* U. S. (155 Fed. Rep., 38; 83. C. C. A., 634; 3 Alaska Rep., 730). Hornstein *v.* U. S. (155 Fed. Rep., 48; 83 C. C. A., 644; 3 Alaska Rep., 731).

Murder or manslaughter committed by means used without the District.

SEC. 2117. That when the crime of murder or manslaughter has been committed by means of a mortal wound given, or injury inflicted, or poison administered without said District, and the person so wounded, injured, or poisoned shall die thereof within said District, the person committing such crime is liable to punishment therefor in said District; and in such case, the action therefor may be commenced and tried in said District.

Carter Code, sec. 8; Charlton Code, sec. 8.

When conviction or acquittal in another jurisdiction is a bar.

SEC. 2118. That when an act declared to be a crime is within the jurisdiction of any State, county, or Territory, as well as of said District, a conviction or acquittal therefor in the former is a bar to a prosecution therefor in said District.

Carter Code, sec. 9; Charlton Code, sec. 9.

# CHAPTER FOUR.

## OF THE GRAND JURY.

Sec.
2119. Grand jury, how selected and summoned.
2120. Qualifications of grand jurors.
2121. Who are exempt.

Mar. 3, 1899.
30 Stat. L., 1286.

Grand jury, how selected and summoned.

SEC. 2119. That grand juries, to inquire of the crimes designated in Title XIV of this act, committed or triable within said District, shall be selected and summoned, and their proceedings shall be conducted, in the manner prescribed by the laws of the United States with respect to grand juries of the United States district and circuit courts, the true intent and meaning of this section being that but one grand jury shall be summoned in each division of the court to inquire into all offenses committed or triable within said District, as well those that are designated in Title XIV of this act as those that are defined in other laws of the United States.

Carter Code, sec. 10; Charlton Code, sec. 10.

Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 750). Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 750). Griggs *v.* U. S. (158 Fed. Rep., 572). U. S. *v.* Beasly (2 Alaska Rep., 94, 95, 96).

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Qualifications of grand jurors.

SEC. 2120. That a person is not competent to act as a juror who has been convicted of a felony nor unless he be a citizen of the United States, a male inhabitant of the District, over twenty-one years of age, and in possession of his natural faculties and of sound mind.

Carter Code, sec. 11; Charlton Code, sec. 11.

U. S. *v.* Clark (46 Fed. Rep., 633). | State *v.* Brown (41 Pac. Rep., 1042).

Who are exempt.

SEC. 2121. That a person is exempt from liability to act as a grand juror if he be—

First. A judicial officer;

Second. Any other civil officer of said District or of the United States whose duties are at the time inconsistent with his attendance as a juror;

Third. An attorney;

Fourth. A minister of the gospel or priest of any denomination;

Fifth. A teacher in a college, academy, or school;

Sixth. A practicing physician;

Seventh. An acting noncommissioned officer, musician, or private of a military organization, duly enrolled in the service of the United States or of said District.

Carter Code, sec. 12; Charlton Code, sec. 12.

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# CHAPTER FIVE.

## OF THE POWERS AND DUTIES OF THE GRAND JURY.


Sec.
2122. Duty of grand jury.
2123. May indict whether defendant has been held to answer or not.
2124. When grand jury may present for opinion of court.
2125. Presentment, duty of court in relation thereto.
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2130. Grand jury to investigate prisons and offices.
2131. To have access to prisons and records.
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2133. Same subject.
2134. District attorney must attend sittings. Who may be present.
2135. Indictment not to be found on statement of juror unless sworn.
2136. When grand juror bound to disclose testimony of a witness.
2137. For what grand juror may be questioned.


Mar. 3, 1899.
30 Stat. L., 1286-1288.
Duty of grand jury.

SEC. 2122. That the grand jury have power, and it is their duty, to inquire into all crimes committed or triable within the jurisdiction of the court, and present them to the court, either by presentment or indictment, as provided in this act.

Carter Code, sec. 13; Charlton Code, sec. 13.

U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 459). U. S. *v.* Beasly (2 Alaska Rep., 97, 102). State *v.* Rinehart (38 Pac. Rep., 822). Griggs *v.* U. S. (158 Fed. Rep., 572).

May indict whether defendant has been held to answer or not.

SEC. 2123. That the grand jury may indict or present a person for a crime, upon sufficient evidence, whether such person has been held to answer for such crime or not.

Carter Code, sec. 14; Charlton Code, sec. 14.

State *v.* Belding (71 Pac. Rep., 330).

When grand jury may present for opinion of court.

SEC. 2124. That when the grand jury are in doubt whether the facts, as shown by the evidence before them, constitute a crime in law, or whether the same has ceased to be punishable by reason of lapse of

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time or a former acquittal or conviction, they may make a presentment of the facts to the court, without mentioning names of individuals, and ask the court to instruct them concerning the law arising thereon.

Carter Code, sec. 15; Charlton Code, sec. 15.

Presentment, duty of court in relation thereto.

SEC. 2125. That such presentment of the facts can not be found and presented to the court except as provided in the last preceding section, and when so found and presented the court shall give such instructions to the grand jury concerning the law of the case as it may think proper and necessary.

Carter Code, sec. 16; Charlton Code, sec. 16.

Foreman may administer oaths to witnesses.

SEC. 2126. That the foreman of the grand jury may administer an oath to any witness appearing before them.

Carter Code, sec. 17; Charlton Code, sec. 17.

May order explanatory evidence to be produced.

SEC. 2127. That the grand jury are not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Carter Code, sec. 18; Charlton Code, sec. 18.

Charge to grand jury (2 Saw. Rep., 667, 670).

What evidence will warrant indictment.

SEC. 2128. That the grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Carter Code, sec. 19; Charlton Code, sec. 19.

Grand juror must disclose his knowledge of commission of crime.

SEC. 2129. That if an individual grand juror know, or have reason to believe, that a crime has been committed which is triable by the court, he must disclose the same to his fellow jurors, who must thereupon investigate the same.

Carter Code, sec. 20; Charlton Code, sec. 20.

Grand jury to investigate prisons and offices.

SEC. 2130. That in addition to the power and duty above prescribed the grand jury have power and it is their duty to inquire—

First. Into the condition and management of every public prison in the District; and

Second. Into the condition and management of the offices pertaining to the courts of justice in the District.

Carter Code, sec. 21; Charlton Code, sec. 21.

To have access to prisons and records.

SEC. 2131. That they shall be entitled to free access at all reasonable times to the prisons and offices mentioned in the last preceding section, and also to the examination, without charge, of all public records in the District.

Carter Code, sec. 22; Charlton Code, sec. 22.

District attorney to present indictment, when.

SEC. 2132. That the district attorney must submit an indictment to the grand jury and cause the evidence in support thereof to be brought before them in case of every person held to answer a criminal charge in the court wherein such jury is formed.

Carter Code, sec. 23; Charlton Code, sec. 23.

Same subject.

SEC. 2133. That the district attorney may submit an indictment to the grand jury in any case when he has good reason to believe that a crime has been committed which is triable by the court.

Carter Code, sec. 24; Charlton Code, sec. 24.

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District attorney must attend sittings; who may be present.

SEC. 2134. That the district attorney, when required by the grand jury, must prepare indictments or presentments for them and attend their sittings to advise them in relation to their duties or to examine witnesses in their presence; but no person other than the district attorney or a witness actually under examination can be allowed to be present during the sittings of the grand jury, nor either such attorney or witness when the grand jury are deliberating or voting upon a matter before them.

Carter Code, sec. 25; Charlton Code, sec. 25.

State *v.* Brown (41 Pac. Rep., 1042). State *v.* Whitney (7 Or. Rep., 386). State *v.* Justus (8 Pac. Rep., 338). State *v.* Moran (14 Pac. Rep., 419).

Indictment not to be found on statement of juror unless sworn.

SEC. 2135. That an indictment or presentment must not be found upon the statement of a grand juror unless he be sworn and examined as a witness.

Carter Code, sec. 26; Charlton Code, sec. 26.

When grand juror bound to disclose testimony of a witness.

SEC. 2136. That a member of a grand jury may be required by any court to disclose the testimony of a witness examined before such grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before such grand jury by any person upon a charge against such person for perjury, or upon his trial therefor.

Carter Code, sec. 27; Charlton Code, sec. 27.

State *v.* Moran (14 Pac Rep., 419).

For what grand juror may be questioned.

SEC. 2137. That a grand juror can not be questioned for anything he may say, or any vote he may give, while acting as such, in relation to any matter legally pending before the grand jury, except for a perjury, of which he may have been guilty in giving testimony before such jury.

Carter Code, sec. 28; Charlton Code, sec. 28.

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# CHAPTER SIX.

## OF THE FINDING AND PRESENTATION OF THE INDICTMENT.


Sec.
2138. The indictment must be found by twelve jurors and indorsed by foreman.
2139. Witnesses' names to be indorsed on indictment; when marked as prosecutor.
2140. Indictment, how presented; a public record, and when not subject to public inspection.
2141. Grand juror or officer not to disclose indictment when not subject to public inspection.
2142. Proceeding when indictment not found "a true bill."
2143. Indictment, effect of, when returned "not a true bill."
2144. Presentment, definition of, and how made.


Mar. 3, 1899.
30 Stat. L., 1288.
The indictment must be found by 12 jurors and indorsed by foreman.

SEC. 2138. That an indictment can not be found without the concurrence of at least twelve grand jurors; and when so found it must be indorsed "a true bill," and such indorsement signed by the foreman of the jury.

Carter Code, sec. 29; Charlton Code, sec. 29.

State *v.* Reinhart (38 Pac. Rep., 822). State *v.* Laurent (7 Pac. Rep., 116). State *v.* Belding (71 Pac. Rep., 330).

Witnesses' names to be indorsed on indictment; when marked as prosecutor.

SEC. 2139. That when an indictment is found the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court; and if the indictment be for a misdemeanor only, and any

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witness has voluntarily appeared before the grand jury to complain of the defendant, his name must be marked as private prosecutor.

Carter Code, sec. 30; Charlton Code, sec. 30.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 759).
Ball *v.* U. S. (147 Fed. Rep., 32; 78 C. C. A, 126; 3 Alaska Rep., 884).
State *v.* Anderson (10 Or. Rep., 452).
State *v.* Andrews (58 Pac. Rep., 765).
State *v.* Pool (25 Pac. Rep., 375).
State *v.* Smith (55 Pac. Rep., 534).
State *v.* Belding (71 Pac. Rep., 330).

Indictment, how presented; a public record, and when not subject to public inspection.

SEC. 2140. That an indictment, when found by the grand jury, as prescribed in the two sections last preceding, must be presented by their foreman, in their presence, in open court, and filed with the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment nor any order or process in relation thereto must be inspected by any person other than the judge of the court or an officer thereof in discharge of a duty concerning the same until after the arrest of the defendant.

Carter Code, sec. 31; Charlton Code, sec. 31.

Grand juror or officer not to disclose indictment when not subject to public inspection.

SEC. 2141. That no grand juror or officer of the court shall disclose any fact concerning such indictment while it is not subject to public inspection; and the violation of this section, or the prohibitions of the section last preceding, is punishable as a contempt.

Carter Code, sec. 32; Charlton Code, sec. 32.

Proceeding when indictment not found "a true bill."

SEC. 2142. That when a person has been held to answer a criminal charge, and the indictment in relation thereto is not found "a true bill," as provided in section twenty-one hundred and thirty-eight of this title, it must be indorsed "not a true bill," which indorsement must be signed by the foreman, and presented to the court and filed with the clerk, and remain a public record; but in the case of an indictment not found "a true bill" against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

Carter Code, sec. 33; Charlton Code, sec. 33.

Indictment, effect of when returned "not a true bill."

SEC. 2143. That when an indictment indorsed "not a true bill" has been presented in court and filed, the effect thereof is to dismiss the charge; and the same can not be again submitted to or inquired of by the grand jury, unless the court so order.

Carter Code, sec. 34; Charlton Code, sec. 34.

Presentment, definition of, and how made.

SEC. 2144. That a presentment of the facts must be made to the court by the foreman in the presence of the grand jury, and with the concurrence of five of their number; but being a mere informal statement of facts for the purpose of obtaining the advice of the court as to the law arising thereon, is not to be filed in the court or preserved beyond the sitting of the grand jury.

Carter Code, sec. 35; Charlton Code, sec. 35.

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# CHAPTER SEVEN.

## OF THE INDICTMENT.


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Sec.
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Mar. 3, 1899.
30 Stat. L., 1289–1291.
Forms of pleading.

SEC. 2145. That the forms of pleading and the rules by which the sufficiency of pleadings is to be determined are those prescribed by this act.

Carter Code, sec. 36; Charlton Code, sec. 36.

U. S. *v.* Doo-Noch-Keen (2 Alaska Rep., 624). State *v.* Daugherty (4 Or. Rep., 200). State *v.* Howe (44 Pac. Rep., 672).

Indictment, the first pleading.

SEC. 2146. That the first pleading on the part of the United States is the indictment.

Carter Code, sec. 37; Charlton Code, sec. 37.

Indictment, what to contain.

SEC. 2147. That the indictment must contain—

First. The title of the action, specifying the name of the court to which the indictment is presented and the names of the parties.

Second. A statement of the facts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Carter Code, sec. 38; Charlton Code, sec. 38.

Nelson *v.* U. S. (30 Fed. Rep., 112; 1 Alaska Rep., 756). "In this case it is held that it is not necessary for an indictment for the violation of section 14 of the act of May 17, 1884, by the sale of intoxicating liquor, to allege that such sale was not made for mechanical, medicinal, or scientific purposes; but the same must be shown, if at all, as a defense."

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 756). "In this case it is held, that in an indictment for statutory offense, it is only necessary to negative an exception in the statute when that exception is such as to render the negative of it an essential part of the definition of the offense."

Endleman *v.* U. S. (86 Fed. Rep., 546, 30 C. C. A., 186, 1 Alaska Rep., 756). "Under the Oregon Criminal Code, in force in Alaska, which dispenses with technicalities in pleading, an indictment charging the defendant, on or about a certain date, and at other times before, did sell 'to John Doe and Richard Roe, and to divers other persons,' whose real names are unknown 'an intoxicating liquor called whiskey, to wit, one glass, pint, quart, gallon of said liquor (the real quantity is to the grand jurors unknown),' etc., is not bad as charging more than one offense."

U. S. *v.* Nelson (29 Fed. Rep., 202); 1 Alaska Rep., 756). "In this case it is held, that when the enacting clause of a statute describes the offense with certain exceptions, it is necessary to state in the indictment all the circumstances and to negative the exception; but, if the exceptions are contained in separate clauses of the statute, they may be omitted in the indictment, and the accused must show that his case comes within them, to avail himself of their benefit."

Fitzpatrick *v.* U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 757).

Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 758). "In this case it is held that under a statute making an intent to 'injure and defraud' an essential element of the crime of uttering a forged instrument an indictment charging an intent to 'injure and defraud' is sufficient."

U. S. *v.* Alaska Packers Assn. (1 Alaska Rep., 217). Exparte Dubuque (1 Alaska Rep., 16). U. S. *v.* Doo



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Noch Keen (2 Alaska Rep., 624). U. S. *v.* Mathei's Bondsmen (2 Alaska Rep., 459). U. S. *v.* Folsom (3 Alaska Rep., 226). U. S. *v.* John J. Sesnon Company (3 Alaska Rep., 595). State *v.* Vowels (4 Or. Rep., 325). State *v.* Jarvis (23 Pac. Rep., 251). State *v.* Carr (6 Or. Rep., 134). State *v.* Lee (21 Pac. Rep., 455). State *v.* Ah Sam (13 Pac. Rep., 303). State *v.* Doty (5 Or. Rep., 493). State *v.* Dougherty (4 Or. Rep., 202). State *v.* Packard (4 Or. Rep., 160). State *v.* Wintzingerode (9 Or. Rep., 156). State *v.* Childers (49 Pac. Rep., 801). State *v.* Lavery (58 Pac. Rep., 107). State *v.* Norton (17 Pac. Rep., 744). State *v.* Kirk (10 Or. Rep., 506). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Dale (8 Or. Rep., 229). State *v.* Lee (56 Pac. Rep., 415). State *v.* Tamler (25 Pac. Rep., 71). State *v.* Smith (8 Pac. Rep., 343). State *v.* Lee Yan Yan (10 Or. Rep., 365). State *v.* Lee Ping Bo (10 Or. Rep., 27). State *v.* Hume (6 Pac Rep., 427). State *v.* Dilley (13 Pac. Rep., 648). State *v.* O'Neal (27 Pac. Rep., 1038). State *v.* Eggleston (77 Pac. Rep., 738). State *v.* Kelly (68 Pac Rep., 1). State *v.* Minnick (102 Pac. Rep., 605).

Form of indictment.

SEC. 2148. That the indictment may be substantially in the following form:

"THE UNITED STATES OF AMERICA } District court for the
"v. } District of Alaska,
"A B. } division No. .

"A B is accused by the grand jury of the District of Alaska, division No. , by this indictment, of the crime of " (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law) "committed as follows:

"The said A B, on the day of , nineteen hundred and , in the District aforesaid" (here set forth the act charged as a crime according to the form adapted to the case, as provided in the next section).

"Dated at , in the District aforesaid, the day of , nineteen hundred and ."

(Signed) "C D, District Attorney."

(Indorsed:) "A true bill."

(Signed) "E F, Foreman of the Grand Jury."

Carter Code, sec. 39; Charlton Code, sec. 39.

State *v.* Tucker (61 Pac. Rep., 894; 51 L. R. A., 246). State *v.* Belding (71 Pac. Rep., 330). State *v.* Gulielmo (79 Pac. Rep., 577). State *v.* Martin (103 Pac. Rep., 512).

NOTE.—See citations under sec. 2147, ante.

Manner of stating act constituting the crime.

SEC. 2149. That the manner of stating the act constituting the crime, as set forth hereinafter, is sufficient in all cases where the forms there given are applicable, and in other cases forms may be used as nearly similar as the nature of the case will permit.

Carter Code, sec. 40; Charlton Code, sec. 40.

State *v.* Ah Lee (23 Pac. Rep., 424). State *v.* Spencer (6 Or. Rep., 153). State *v.* Brown (7 Or. Rep., 199). State *v.* Wright (24 Pac. Rep., 229). U. S. *v.* Warwick (51 Fed. Rep., 280). State *v.* Eddy (81 Pac. Rep., 941). State *v.* Parr (103 Pac. Rep., 434). State *v.* Doddson (4 Or. Rep., 64). Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 758). U. S. *v.* Alaska Pkrs. Assn. (1 Alaska Rep., 217).

NOTE.—See citations under sec. 2147, ante.

2149A.—IN AN INDICTMENT FOR MURDER.

—murder.

Purposely and of deliberate and premeditated malice killed C D by (shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the window of a building, or by means unknown to the grand jury, as the case may be).

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2149B.—In an Indictment for Murder Committed in the Commission of an Attempt to Commit Rape, Arson, Robbery, or Burglary.

Was engaged in the commission (or attempt to commit, as the case may be) of arson, by (stating it, as in an indictment therefor). And the said A C, while engaged in the commission (or attempt to commit, as the case may be) of such arson, by his act killed C D, by (striking him with a club, or by other means, or means unknown to the grand jury, to be stated as in number one). —murder in committing rape, etc.

2149C.—In an Indictment for Murder in the Second Degree.

Purposely and maliciously killed C. D by (shooting him with a gun or pistol, or by other means, to be stated as in number one). —murder, second degree.

2149D.—In an Indictment for Murder in the Second Degree Committed in the Commission or Attempt to Commit a Felony.

Was engaged in the commission (or attempt to commit, as the case may be) of the following felony (stating it as in an indictment therefor). —murder, second degree, in committing felony, etc.

And the said A B, while engaged in the commission (or attempt, as the case may be), by his act killed C D, by (striking him with a club, or by other means, to be stated as in number one).

2149E.—In an Indictment for Manslaughter.

Voluntarily killed C D by (shooting him with a gun or pistol, or by other means, to be stated as in number one). —manslaughter.

2149F.—Manslaughter by Assisting Another to Commit Self-Murder.

Purposely and deliberately assisted or procured one C D to commit self-murder, which crime the said C D then and there committed by (hanging himself by the neck until he was dead, or by other means, to be stated as in number one). —manslaughter in assisting suicide, etc.

2149G.—In an Indictment for Rape.

Forcibly ravished C D, a woman of the age of fourteen years or upwards, or carnally knew a female child under the age of fourteen years (as the case may be). —rape.

2149H.—In an Indictment for Arson.

Willfully and maliciously set fire to (or burned) a dwelling house of another, namely, C D (or whose name is unknown to the grand jury). —arson.

2149I.—In an Indictment for Robbery.

Feloniously took a gold watch (or as the case may be) from the person of C D, and against his will, by violence to his person (or by putting him in fear of some immediate injury to his person). —robbery.

2149J.—Robbery, Being Armed with a Dangerous Weapon.

Being armed with a dangerous weapon, did commit an assault upon one C D, with intent, if resisted, to kill or wound the said C D, and —robbery while armed.

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then and there feloniously took a gold watch (or as the case may be) from the person of the said C D, and against his will.

2149K.—In an Indictment for Larceny.

—larceny. Feloniously took and carried away a gold watch (or as the case may be), the personal property of C D (or of a person whose name is unknown to the grand jury), of the value of more than thirty-five dollars.

2149L.—Larceny in a Dwelling House.

—larceny in dwelling. Feloniously took and carried away from a dwelling house (or other house, ship, or boat, as the case may be) a gold watch (or as the case may be), the personal property of C D (or of a person whose name is unknown to the grand jury).

2149M.—In an Indictment for Burglary.

—burglary. Broke and entered a dwelling house in which there was at the time a human being, namely, one C D (or whose name is unknown to the grand jury, as the case may be), with intent to commit larceny (or other crime, describing it generally) therein, by forcibly bursting or breaking the wall (or an outer door, or a window, or a shutter of a window) of such house (or as the case may be).

2149N.—Burglary after Entering with Intent to Commit Crime.

—burglary after entering with intent to commit crime. Having entered a dwelling house in which there was at the time a human being, namely, one C D (or whose name is unknown to the grand jury, as the case may be), with intent to commit larceny (or other crime, describing it generally) therein, broke such dwelling house by forcibly bursting or breaking the wall (or by other means to be stated as in number 2149M), or (following the words therein) was armed with a dangerous weapon therein, or committed an assault upon C D, a person lawfully then in such house.

2149O.—In an Indictment for Forgery.

—forgery. Forged (or falsely made, altered, or counterfeited, or as the case may be) an instrument purporting to be (or being) the last will and testament of C D, devising certain property with intent to defraud or injure.

2149P.

Forged a certificate purporting to have been issued by J C, an officer duly authorized to make such certificate, of the acknowledgment of C D of the execution by him of a conveyance to E F of certain real property, with intent to defraud or injure.

2149Q.

—counterfeiting. Counterfeited a gold (or silver) coin of the of Mexico, called a dollar, which was at that time current by law or usage within this district.

2149R.—In an Indictment for Perjury.

—perjury. On his examination as a witness, duly sworn to testify the truth, in the trial of an action at law in the court of , between C D,

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plaintiff, and E F, defendant, which court had authority to administer said oath, he testified falsely, that (stating the facts alleged to be false), the matters so testified being material, and the testimony being willfully false.

2149S.—IN AN INDICTMENT FOR POLYGAMY.

Having a wife (or husband) then living, unlawfully married one C D, or simultaneously, or on the same day, unlawfully married C D and E F. —polygamy.

2149T.—IN AN INDICTMENT FOR LIBEL.

Published or caused to be published in a newspaper called the —— the following libel concerning C D (stating the matter published). —libel.

Carter Code, appendix, pp. 127–129; Charlton Code, appendix, pp. 214–217.

SEC. 2150. That the indictment must be direct and certain as it regards: Indictment must be direct and certain as to what.

First. The party charged;

Second. The crime charged; and

Third. The particular circumstances of the crime charged when they are necessary to constitute a complete crime.

Carter Code, sec. 41; Charlton Code, sec. 41.

State *v.* Eddy (81 Pac. Rep., 941). | State *v.* Emmons (104 Pac. Rep., 882).
State *v.* Branton (87 Pac. Rep., 535). | State *v.* Parr (103 Pac. Rep., 434).

SEC. 2151. That when a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. Proceedings when defendant indicted by fictitious name.

Carter Code, sec. 42; Charlton Code, sec. 42.

SEC. 2152. That the indictment must charge but one crime, and in one form only; except that where the crime may be committed by use of different means the indictment may allege the means in the alternative. Indictment must charge but one crime and in one form.

Carter Code, sec. 43; Charlton Code, sec. 43.

State *v.* Jarvis (23 Pac. Rep., 251). | *v.* Savage (60 Pac. Rep., 610). State
State *v.* Lee (56 Pac. Rep., 415). | *v.* Bergman (6 Or. Rep., 341). State
State *v.* Carr (6 Or. Rep., 134). | *v.* Humphreys (70 Pac. Rep., 824).
State *v.* Dale (8 Or. Rep., 229). State | State *v.* Branton (87 Pac. Rep., 535).
*v.* Hinkle (54 Pac. Rep., 155). State | State *v.* Reyner (91 Pac. Rep., 301).

SEC. 2153. That the precise time at which the crime was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding thereof, and within the time in which an action may be commenced therefor, except where time is a material ingredient in the crime. Time, when material, to be stated precisely; otherwise not.

Carter Code, sec. 44; Charlton Code, sec. 44.

State *v.* Ah Sam (13 Pac. Rep., 303). | State *v.* Ah Lee (23 Pac. Rep., 424).
State *v.* Cutting (3 Or. Rep., 260). | State *v.* Lurch (6 Pac. Rep., 411).
U. S. *v.* Winslow (3 Saw. Rep., 337). | State *v.* Wilson (6 Or. Rep., 429).
State *v.* Adams (26 Pac. Rep., 837). | State *v.* Eggleston (77 Pac. Rep., 738).

SEC. 2154. That when a crime involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. Statement as to person injured or intended to be.

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Carter Code, sec. 45; Charlton Code, sec. 45.

State *v* Lurch (6 Pac. Rep., 411). Griggs *v.* U. S. (158 Fed. Rep., 572; 85 C. C. A., 596; 3 Alaska Rep., 755). "Under the statutes of Alaska and especially sections 2154, 2158, 2159, which require defects in form in indictments which do not tend to prejudice the substantial rights of the defendant to be disregarded, held, an indictment for obtaining money by false pretense is sufficient, although it does not state the ownership of the money by direct allegation, if facts are alleged which sufficiently show the ownership, as where it alleges that the false pretenses were made with intent to defraud a person named of a certain sum of money and that, relying thereon, he paid such sum to defendant."

What description of animal sufficient.

SEC. 2155. That when a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describes the animal by the common name of its class.

Carter Code, sec. 46; Charlton Code, sec. 46.

State *v.* Brinkley (104 Pac. Rep., 893).

Construction of words.

SEC. 2156. That the words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Carter Code, sec. 47; Charlton Code, sec. 47.

State *v.* O'Neal (27 Pac. Rep., 1038).

Words of statute need not be strictly pursued.

SEC. 2157. That words used in a statute to define a crime need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Carter Code, sec. 48; Charlton Code, sec. 48.

State *v.* Lee Yan Yan (10 Or. Rep., 365). State *v.* Daly (18 Pac. Rep., 357).

Indictment, when sufficient.

SEC. 2158. That the indictment is sufficient if it can be understood therefrom:

First. That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

Second. That it was found by a grand jury of the political division in which the court was held;

Third. That the defendant is named, or if his name can not be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;

Fourth. That the crime was committed within the jurisdiction of the court;

Fifth. That the crime was committed at some time prior to the finding of the indictment, and within the time limited by law for the commencement of an action therefor;

Sixth. That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended;

Seventh. That the act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

Carter Code, sec. 49; Charlton Code, sec. 49.

Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 759). Nelson *v.* U. S. (30 Fed Rep., 118; 1 Alaska Rep., 756). Griggs *v.* U. S. (158 Fed. Rep., 572; 85 C. C. A., 596; 3 Alaska Rep., 755). State *v.* Horne (26 Pac. Rep., 665). State *v.* Norton (17 Pac. Rep., 744). Burchard *v.* State (2 Or. Rep., 79). State *v.* Bruce (5 Or. Rep., 69). State *v.* Carlson (62 Pac. Rep., 1016). State *v.* Eddy (81 Pac. Rep., 941). State *v.* Carmody (91 Pac. Rep., 1081).

NOTE.—See citation under sec. 2154.

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Indictment not insufficient for defect of form.

SEC. 2159. That no indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Carter Code, sec. 50; Charlton Code, sec. 50.

Stockslager *v.* U. S. (116 Fed Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 758). Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 758). Griggs *v.* U. S. (158 Fed Rep., 572; 85 C. C. A., 596; 3 Alaska Rep., 755).

NOTE.—See citation under sec. 2154.

Presumptions of law or matters judicially known need not be stated.

SEC. 2160. That neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment.

Carter Code, sec. 51; Charlton Code, sec. 51.

U. S. *v.* Williams (2 Fed. Rep., 61; 1 Alaska Rep., 739). Meydenbauer *v.* Stevens (78 Fed. Rep., 787; 1 Alaska Rep., 781). Butler *v.* Goodenough Min. Co. (1 Alaska Rep., 246). Kinkead *v.* U. S. (150 U. S. Rep., 483; 1 Alaska Rep., 739). The *La Nimfa* (75 Fed. Rep., 513; 21 C. C. A., 434; 1 Alaska Rep., 830). In re Burkell (2 Alaska Rep., 117). Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 646). Binns *v.* U. S. (194 U. S. Rep., 486; 2 Alaska Rep., 675). Perovich *v.* Perry (167 Fed. Rep., 789; 93 C. C. A., 209; 3 Alaska Rep., 751). U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 765). Ames *v.* Kruzner (1 Alaska Rep., 598). Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 769). U. S. *v.* Manthie's Bondsmen (2 Alaska Rep., 459). White's Guard. *v.* Martin (2 Alaska Rep., 495). State *v.* Eddy (81 Pac. Rep., 941).

Pleading a judgment or proceeding before a court of special jurisdiction.

SEC. 2161. That in pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

Carter Code, sec. 52; Charlton Code, sec. 52.

Private statute, how pleaded.

SEC. 2162. That in pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Carter Code, sec. 53; Charlton Code, sec. 53.

Pleading in indictment for libel.

SEC. 2163. That an indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

Carter Code, sec. 54; Charlton Code, sec. 54.

Indictment for forgery when instrument has been withheld or destroyed by defendant.

SEC. 2164. That when an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Carter Code, sec. 55; Charlton Code, sec. 55.

Pleadings in indictment for perjury or subornation of perjury.

SEC. 2165. That in an indictment for perjury or subornation of perjury it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is con-

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nected, nor the commission or authority of the court or person before whom the perjury was committed.

Carter Code, sec. 56; Charlton Code, sec. 56.

State *v.* Witham (6 Or. Rep., 366). State *v.* Spencer (6 Or. Rep., 152). State *v.* Kalyton (45 Pac. Rep., 756). State *v.* Woolridge (78 Pac. Rep., 333). State *v.* Jewett (85 Pac. Rep., 994). State *v.* Luper (95 Pac. Rep., 811).

One or more defendants in same indictment may be convicted or acquitted.

SEC. 2166. That upon an indictment against several defendants any one or more may be convicted or acquitted.

Carter Code, sec. 57; Charlton Code, sec. 57.

Griggs *v.* U. S. (158 Fed. Rep., 572; 85 C. C. A., 596; 2 Alaska Rep., 755).

Distinction between persons committing and aiding in commission of felony abrogated.

SEC. 2167. That the distinction between an accessory before the fact and a principal, and between principals in the first and second degree in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, must be indicted, tried, and punished as principals, as in the case of a misdemeanor.

Carter Code, sec. 58; Charlton Code, sec. 58.

Bird *v.* U. S. (1 Alaska Rep., 752). State *v.* Moran (14 Pac. Rep., 419). State *v.* Kirk (10 Or. Rep., 505). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Branton (56 Pac. Rep., 267). State *v.* Hinkle (54 Pac. Rep., 155). State *v.* Lewis (94 Pac. Rep., 831).

Accessory after fact may be tried before principal.

SEC. 2168. That an accessory after the fact to the commission of a felony may be indicted, tried, and punished, though the principal felon be neither indicted nor tried.

Carter Code, sec. 59; Charlton Code, sec. 59.

Indictment for compounding crime though the person committing the same has not been indicted.

SEC. 2169. That a person may be indicted for having, with the knowledge of the commission of a crime, taken money or property of another, or a gratuity or a reward, or an engagement or promise thereof, upon an agreement or understanding, express or implied, to compound or conceal the crime, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original crime has not been indicted or tried.

Carter Code, sec. 60; Charlton Code, sec. 60.

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# CHAPTER EIGHT.

## OF THE ARRAIGNMENT OF THE DEFENDANT.


Sec.
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Mar. 3, 1899.
30 Stat. L., 1291–1293.

Defendant when and where arraigned.

SEC. 2170. That when the indictment has been filed, the defendant, if he has been arrested, or as soon thereafter as he may be, must be arraigned thereon before the court in which it is found.

Carter Code, sec. 61; Charlton Code, sec. 61.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 726). | State *v.* Walton (91 Pac. Rep., 490).

Arraignment, how made.

SEC. 2171. That the arraignment must be made by the court, or by the clerk or the district attorney under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof and the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

Carter Code, sec. 62; Charlton Code, sec 62.

NOTE.—See cases cited under sec. 2191, post.

Defendant to be informed that he is entitled to counsel.

SEC. 2172. That if the defendant appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel.

Carter Code, sec. 63; Charlton Code, sec. 63.

Defendant to be requested to declare his true name.

SEC. 2173. That when the defendant is arraigned he must be informed that if the name by which he is indicted be not his true name he must then declare his true name or be proceeded against by the name in the indictment.

Carter Code, sec. 64; Charlton Code, sec. 64.

Proceeding if the defendant do not give his true name.

SEC. 2174. That if the defendant give no other name, the court may proceed accordingly.

Carter Code, sec. 65; Charlton Code, sec. 65.

Proceeding when defendant gives another name.

SEC. 2175. That if the defendant allege that another name is his true name, the court must direct an entry thereof to be made in its journal and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Carter Code, sec. 66; Charlton Code, sec. 66.

Time allowed the defendant to answer the indictment.

SEC. 2176. That if, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time as the court may deem reasonable, to answer the indictment.

Carter Code, sec. 67; Charlton Code, sec. 67.

NOTE.—See cases cited under sec. 2191, post.

How defendant may answer indictment.

SEC. 2177. That if the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment or may demur or plead thereto.

Carter Code, sec. 68; Charlton Code, sec. 68.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 726). U. S. *v.* Yakutat & Southern R. Co. | (2 Alaska Rep., 628). U. S. *v.* Myers 2 Alaska Rep., 158).

NOTE.—See cases cited under sec. 2191, post.

If defendant refuse to plead, plea of not guilty to be entered.

SEC. 2178. That if the defendant, within the time required, refuse to demur or plead to the indictment, the court must direct that a plea of not guilty be entered for him.

Carter Code, sec. 69; Charlton Code, sec. 69.

Personal appearance at arraignment, when necessary.

SEC. 2179. That when the indictment is for a felony the defendant must be personally present at the arraignment, but if it be for a mis-

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demeanor only, and the defendant has been held to answer to the charge, his personal appearance is unnecessary, and he may appear by counsel.

Carter Code, sec. 70; Charlton Code, sec. 70.

State *v.* Sullivan (98 Pac. Rep., 493).

If defendant in custody, may be brought in by order.

SEC. 2180. That when the personal appearance of the defendant is necessary, if he be in custody, the court may direct the proper officer to bring him before it to be arraigned, and the officer must do so accordingly.

Carter Code, sec. 71; Charlton Code, sec. 71.

If discharged on bail or deposit, bench warrant may issue.

SEC. 2181. That if the defendant has given bail, or has deposited money in lieu thereof, and does not appear to be arraigned when his personal appearance is necessary therefor, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited in lieu thereof, may order the clerk to issue a bench warrant for his arrest.

Carter Code, sec. 72; Charlton Code, sec. 72.

U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 466, 467).

State *v.* Williams (77 Pac. Rep., 965).

Bench warrant, by whom and how issued.

SEC. 2182. That when an indictment is filed in court, if the defendant has not been arrested and held to answer the charge, unless he voluntarily appear for arraignment the court must order the clerk to issue a bench warrant for his arrest.

Carter Code, sec. 73; Charlton Code, sec. 73.

U. S. *v.* Yakutat & Southern R. Co. (2 Alaska Rep., 628).

If crime bailable, indorsement on.

SEC. 2183. That if the crime charged in the indictment be bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail, and the clerk must indorse the same upon such warrant and sign it, substantially as follows: "The defendant is to be admitted to bail in the sum of dollars."

Carter Code, sec. 74; Charlton Code, sec. 74.

Warrant to issue on application of district attorney.

SEC. 2184. That at any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, must issue such warrant as by order directed, whether the court be sitting or not.

Carter Code, sec. 75; Charlton Code, sec. 75.

Bench warrant, form of.

SEC. 2185. That the bench warrant upon the indictment must be substantially in the following form:

Division No.

"District court for the District of Alaska. In the name of the United States of America.

"To the United States marshal for the District of Alaska, or any deputy, greeting:

"An indictment having been found on the day of , hundred and , in the district court for the District aforesaid, division No. , charging A B with the crime of (designating it generally), this is to command you forthwith to arrest the defendant, and bring him before such court to answer the indictment, or, if the court have adjourned for the term, that you detain him in your custody. By order of the court.

"Witness my hand and seal of said district court, affixed at this day of , hundred and .

[L. S.] "C D, Clerk."

Carter Code, sec. 76; Charlton Code, sec. 76.

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When defendant must be taken before magistrate.

SEC. 2186. That when the crime is bailable, and the defendant requires it, the officer making the arrest must take him before the court if in session, and if the court is not in session, before a commissioner for the purpose of putting in bail, and thereupon such commissioner must proceed in respect thereto according to the provisions of chapter twenty-two of this act, entitled "Bail."

Carter Code, sec. 77; Charlton Code, sec. 77.

Proceeding on putting in bail.

SEC. 2187. That if bail be taken, the court or the commissioner must make the order prescribed by section twenty-three hundred and thirty-two of this Title, and deliver it to the officer, who must thereupon discharge the defendant, and without delay return the warrant and order to the clerk of the court at which the defendant is required to appear.

Carter Code, sec. 78; Charlton Code, sec. 78.

Same subject.

SEC. 2188. That if the bail be not allowed, the officer must take the defendant before the court or commit him to the custody of the jailer, according to the command of the warrant.

Carter Code, sec. 79; Charlton Code, sec. 79.

Court may order defendant into custody unless increased bail be given.

SEC. 2189. That although the defendant has put in bail to answer the charge or the indictment, the court may, at any time after the indictment is found, order the defendant into actual custody, unless he give bail with new sureties or in an increased amount, to be specified in the order.

Carter Code, sec. 80; Charlton Code, sec. 80.

Defendant, if present, to be committed; if not, bench warrant to issue.

SEC. 2190. That if the defendant be present when the order is made, he must be forthwith committed accordingly; but if he be not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Carter Code, sec. 81; Charlton Code, sec. 81.

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## CHAPTER NINE.

### OF SETTING ASIDE THE INDICTMENT.


Sec.
2191. Indictment, when set aside on motion.
2192. Motion to set aside, when made and heard.
2193. Motion, if granted, proceeding thereon.
2194. Effect of order for resubmission.
2195. New indictment in such case, when to be found.
2196. Indictment, order to set aside no bar to further prosecution.


Mar. 3, 1899.
30 Stat. L., 1293–1294.
Indictment, when set aside on motion.

SEC. 2191. That the indictment must be set aside by the court, upon the motion of the defendant, in either of the following cases:

First. When it is not found, indorsed, and presented as prescribed in chapter six of Title XV of this act.

Second. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

Carter Code, sec. 82; Charlton Code, sec. 82.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 759).
State *v.* Whitney (7 Or. Rep., 388).
State *v.* Justus (8 Pac. Rep., 337).
State *v.* Reinhart (38 Pac. Rep., 822).
State *v.* Witt 55 Pac. Rep., 1053).
State *v.* McElvain (58 Pac. Rep., 525).
State *v.* Smith (55 Pac. Rep., 534).
State *v.* Pool (25 Pac. Rep., 357).
State *v.* Andrews (58 Pac. Rep., 765).
State *v.* Bock (88 Pac. Rep., 318).

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Motion to set aside, when made and heard.

SEC. 2192. That the motion to set aside the indictment must be made and heard at the time of the arraignment, unless for good cause the court postpone the hearing to a future time, and if not so made, the defendant is precluded from afterwards taking the objections mentioned in the section last preceding.

Carter Code, sec. 83; Charlton Code, sec. 83.

Endleman *v.* U. S. (86 Fed. Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 723). "In this case it is held that a motion to quash an indictment is ordinarily addressed to the discretion of the court, and the overruling thereof is not ordinarily assignable as error." U. S. *v.* Meyers (2 Alaska Rep., 164). Gue *v.* City of Eugene (100 Pac. Rep., 254).

Motion, if granted, proceeding thereon.

SEC. 2193. That if the motion be allowed, the court must order that the defendant, if in custody, be discharged therefrom; or if he have given bail or deposited money in lieu thereof, that his bail be exonerated or his money refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Carter Code, sec. 84; Charlton Code, sec. 84.

Effect of order for resubmission.

SEC. 2194. That if the court direct that the case be resubmitted, the defendant, if then in custody, must so remain, unless he be admitted to bail; or if he have already given bail, or deposited money in lieu thereof, such bail or money is answerable for the appearance of the defendant to answer a new indictment, if one be found.

Carter Code, sec. 85; Charlton Code, sec. 85.

U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 459, 462). | Hyde *v.* Cross (37 Pac. Rep., 59).

New indictment in such case, when to be found.

SEC. 2195. That unless a new indictment be found before the next grand jury is discharged, the court must, on the discharge of such grand jury, make the order prescribed by section twenty-one hundred and ninety-three of this title.

Carter Code, sec. 86; Charlton Code, sec. 86.

Indictment, order to set aside no bar to further prosecution.

SEC. 2196. That an order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same crime.

Carter Code, sec. 87; Charlton Code, sec. 87.

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# CHAPTER TEN.

## OF THE DEMURRER.


Sec.
2197. Demurrer or plea only pleading on part of defendant.
2198. Demurrer or plea, when put in.
2199. Demurrer, grounds of.
2200. Demurrer, how put in and its form.
2201. Demurrer, when heard.
2202. Judgment on demurrer.
2203. Proceeding when demurrer allowed.
2204. If resubmission not ordered, defendant to be discharged.
2205. Proceeding if resubmission ordered.
2206. Proceeding if demurrer be disallowed.
2207. What objections may be taken at the trial or in arrest of judgment.


Mar. 3, 1899.
30 Stat. L., 1294–1295.
Demurrer or plea only pleading on part of defendant.

SEC. 2197. That the only pleading on the part of the defendant is either a demurrer or plea.

Carter Code, sec. 88; Charlton Code, sec. 88.

U. S. *v.* Meyers (2 Alaska Rep., 158). | State *v.* Conklin (84 Pac. Rep., 482).

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Demurrer or plea when put in.

SEC. 2198. That both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to defendant for that purpose.

Carter Code, sec. 89; Charlton Code, sec. 89.

U. S. *v.* Yakutat & Southern R. Co. (2 Alaska Rep., 628). | State *v.* Sullivan (98 Pac. Rep., 493).

Demurrer, grounds of.

SEC. 2199. That the defendant may demur to the indictment when it appears upon the face thereof either—

First. That the grand jury by which it was found had no legal authority to inquire into the crime charged, because the same is not triable within the District.

Second. That it does not substantially conform to the requirements of chapter seven of Title XV of this act.

Third. That more than one crime is charged in the indictment.

Fourth. That the facts stated do not constitute a crime.

Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the crime charged, or other legal bar to the action.

Carter Code, sec. 90; Charlton Code, sec. 90.

*Subdivision 1*: U. S. *v.* Richards & Jourden (1 Alaska Rep., 614).
*Subdivision 4*: U. S. *v.* Richards & Jourden (1 Alaska Rep., 614).
*Generally*: State *v.* Jarvis (23 Pac. Rep., 251). State *v.* Lee (56 Pac. Rep., 415). State *v.* Carlson (62 Pac. Rep., 1019). State *v.* Hinkle (54 Pac. Rep., 155). State *v.* Bruce (5 Or. Rep., 69). State *v.* Doty (5 Or. Rep., 493). State *v.* Horne (26 Pac. Rep., 665). State *v.* Bloodsworth (34 Pac. Rep., 1023). State *v.* Mack (25 Pac. Rep., 639). State *v.* Dougherty (4 Or. Rep., 200). State *v.* Kline (93 Pac. Rep., 237). State *v.* Reyner (91 Pac. Rep., 301).

Demurrer, how put in and its form.

SEC. 2200. That the demurrer must be in writing, signed either by the defendant or his attorney, and filed. It must distinctly specify the ground of objection to the indictment, or it may be disregarded.

Carter Code, sec. 91; Charlton Code, sec. 91.

Demurrer, when heard.

SEC. 2201. That upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the court may direct.

Carter Code, sec. 92; Charlton Code, sec. 92.

Judgment on demurrer.

SEC. 2202. That upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an entry to that effect must be entered in the journal.

Carter Code, sec. 93; Charlton Code, sec. 93.

Proceeding when demurrer allowed.

SEC. 2203. That if the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another action for the same crime, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Carter Code, sec. 94; Charlton Code, sec. 94.

U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 459). | State *v.* Eddy (82 Pac. Rep., 707).

If resubmission not ordered, defendant to be discharged.

SEC. 2204. That if the court do not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail his bail is exonerated, or if he have deposited money in lieu thereof the money must be refunded to him.

Carter Code, sec. 95; Charlton Code, sec. 95.

Proceeding if resubmission ordered.

SEC. 2205. That if the court direct the case to be resubmitted, the same proceedings must be had thereon as are prescribed in sections

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twenty-one hundred and ninety-four and twenty-one hundred and ninety-five of this title.

Carter Code, sec. 96; Charlton Code, sec. 96.

Hyde *v.* Cross (37 Pac. Rep., 59).

Proceeding if demurrer be disallowed.

SEC. 2206. That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; but if he do not plead, judgment must be given against him.

Carter Code, sec. 97; Charlton Code, sec. 97.

People *v.* King (28 Calif. Rep., 266). People *v.* Jocelyn (29 Calif. Rep., 562). State *v.* Walton (91 Pac. Rep., 490).

What objections may be taken at the trial or in arrest of judgment.

SEC. 2207. That when the objections mentioned in section twenty-two hundred and two appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

Carter Code, sec. 98; Charlton Code, sec. 98.

NOTE.—The reference to sec. 2202 (Carter and Charlton, 93) above is obviously erroneous. The reference should be sec. 2199 (Carter and Charlton, secs. 90).

U. S. *v.* Richards & Jourden (1 Alaska Rep., 613). Ex parte Dubuque (1 Alaska Rep., 16). State *v.* Whitney (7 Or. Rep., 386). State *v.* Dougherty (4 Or. Rep., 200). State *v.* Martin (100 Pac. Rep., 1106). State *v.* Reyner (91 Pac. Rep., 300). State *v.* Walton (91 Pac. Rep., 490).

NOTE.—See also citations under sec. 2199, ante.

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## CHAPTER ELEVEN.

### OF PLEAS TO THE INDICTMENT.


Sec.
2208. The different kinds of pleas.
2209. Plea, how put in, and its form.
2210. Plea of guilty must be put in in person, except in case of corporation.
2211. Plea of guilty, when and how withdrawn.
2212. Plea of not guilty, what it controverts.
2213. Plea of not guilty, what may be given in evidence under it.
2214. What is not deemed a former acquittal.
2215. What is deemed a former acquittal.
2216. Conviction or acquittal for crime consisting of different degrees, when a bar to another indictment.


Mar. 3, 1899.
30 Stat. L., 1295–1296.
The different kinds of pleas.

SEC. 2208. That there are three kinds of pleas to an indictment; a plea of—

First. Guilty.

Second. Not guilty.

Third. A former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty.

Carter Code, sec. 99; Charlton Code, sec. 99.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 726). Grossman *v.* Oakland (41 Pac. Rep., 5; 36 L. R. A., 478). State *v.* Branton (56 Pac. Rep., 267). State *v.* Howe (44 Pac. Rep., 672).

Plea, how put in and its form.

SEC. 2209. That every plea must be oral, and must be entered on the journal of the court in substantially the following form:

First. If the defendant pleads guilty: "The defendant pleads that he is guilty of the crime charged in this indictment."

Second. If he pleads not guilty: "The defendant pleads that he is not guilty of the crime charged in this indictment."

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Third. If he pleads a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the crime charged in this indictment by the judgment of the court of (naming it), rendered at (naming the place), on the day of , hundred and .

Carter Code, sec. 100; Charlton Code, sec. 100.

State *v.* Stewart (4 Pac. Rep., 128). Gue *v.* City of Eugene (100 Pac. Rep., 254). State *v.* Walton (99 Pac. Rep., 431).

Plea of guilty must be put in in person, except in case of corporation.

SEC. 2210. That a plea of guilty must in all cases be put in by the defendant in person, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Carter Code, sec. 101; Charlton Code, sec. 101.

Plea of guilty, when and how withdrawn.

SEC. 2211. That the court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted therefor.

Carter Code, sec. 102; Charlton Code, sec. 102.

Curran *v.* State (99 Pac. Rep., 420).

Plea of not guilty, what it controverts.

SEC. 2212. That the plea of not guilty controverts and is a denial of every material allegation in the indictment.

Carter Code, sec. 103; Charlton Code, sec. 103.

State *v.* Lavery (49 Pac. Rep. 852). State *v.* Young (96 Pac. Rep., 1067).

Plea of not guilty, what may be given in evidence under it.

SEC. 2213. That all matters of fact tending to establish a defense to the charge in the indictment, other than those specified in the third subdivision of section twenty-two hundred and eight of this title, may be given in evidence under the plea of not guilty.

Carter Code, sec. 104; Charlton Code, sec. 104.

State *v.* Branton (56 Pac. Rep., 267).

What is not deemed a former acquittal.

SEC. 2214. That if the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon a demurrer to its form or substance, or discharged for want of prosecution, without a judgment of acquittal or in bar of another prosecution, it is not an acquittal of the same crime.

Carter Code, sec. 105; Charlton Code, sec. 105.

U. S. *v.* Owens (2 Alaska Rep., 480). "In this case it is held, that where a person is tried upon an indictment charging murder in the first degree, and the jury returns a verdict against him for murder in the second degree, which is reversed on appeal on his application, on the subsequent trial he can not again be tried for murder in the first degree, and for no higher offense than that of murder in the second degree."

State *v.* Stewart (4 Pac. Rep., 128). State *v.* Magone (56 Pac. Rep., 648). State *v.* Howe (44 Pac. Rep., 672). U. S. *v.* Barnhart (22 Fed. Rep., 238).

NOTE.—See sec. 2226, post.

What is deemed a former acquittal.

SEC. 2215. That when, however, the defendant was acquitted on the merits, he is deemed acquitted of the same crime, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

Carter Code, sec. 106; Charlton Code, sec. 106.

U. S. *v.* Owens (199 U. S. Rep., 521; 2 Alaska Rep., 480). State *v.* Shaffer (32 Pac. Rep., 545). State *v.* Reinhart (38 Pac. Rep., 822). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Littschke (40 Pac. Rep., 167). State *v.* McCormack (8 Pac. Rep., 240).

NOTE.—See sec. 2226, post.

Conviction or acquittal for crime consisting of different degrees, when a bar to another indictment.

SEC. 2216. That when the defendant shall have been convicted or acquitted upon the indictment for a crime consisting of different degrees, such conviction or acquittal is a bar to another indictment for the crime charged in the former, or for any inferior degree of

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that crime, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, as provided in sections twenty-two hundred and fifty-five and twenty-two hundred and fifty-six of this Title.

Carter Code, sec. 107; Charlton Code, sec. 107.

State *v.* Steeves (43 Pac. Rep., 947). State *v.* McCormack (8 Pac. Rep., 240 (Or.)). State *v.* Stewart (4 Pac. Rep., 128).

## CHAPTER TWELVE.

### OF ISSUES OF LAW AND FACT.

Sec.
2217. Issue of fact, definition of.
2218. Issue of law, definition of.
2219. Issue of law or fact, how tried.
2220. When defendant must appear in person on trial.

Mar. 3, 1899.
30 Stat. L., 1296.
Issue of fact, definition of.

SEC. 2217. That an issue of fact arises—

First. Upon a plea of not guilty; or,

Second. Upon a plea of former conviction or acquittal of the same crime.

Carter Code, sec. 108; Charlton Code, sec. 108.

State *v.* Childers (49 Pac. Rep., 801). State *v.* Walton (91 Pac. Rep., 494).

Issue of law, definition of.

SEC. 2218. That an issue of law arises upon a demurrer to the indictment.

Carter Code, sec. 109; Charlton Code, sec. 109.

When defendant must appear in person on trial.

SEC. 2219. That an issue of law must be tried by the court, and an issue of fact by jury, of the political division in which the action is triable.

Carter Code, sec. 110; Charlton Code, sec. 110.

Issue of law or fact, how tried.

SEC. 2220. That if the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if it be for a felony, he must be present in person.

Carter Code, sec. 111; Charlton Code, sec. 111.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 726). State *v.* Abrams (8 Pac. Rep., 327). State *v.* Shores (4 Or. Rep., 198). State *v.* Smith (8 Pac. Rep., 343). State *v.* Weymire (97 Pac. Rep., 46).

## CHAPTER THIRTEEN.

### OF THE POSTPONEMENT OF TRIAL.

Sec.
2221. Postponement of trial, when and how allowed.
2222. May be refused unless party consent to take deposition of witness.
2223. Order for taking the deposition.
2224. Deposition to be filed, and when may be read.
2225. When court may order indictment discharged for want of prosecution.
2226. Effect of such discharge.
2227. Proceeding upon discharge in relation to bail.

Mar. 3, 1899.
30 Stat. L., 1296–1297.

SEC. 2221. That when an indictment is at issue upon a question of fact, and before the same is called for trial, the court may, upon sufficient cause shown by such affidavits as the defendant may produce, or

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Postponement of trial, when and how allowed.

the statement of the district attorney, direct the trial to be postponed to another day in the same term or to another term; and all affidavits and papers read on either side upon the application must be first filed with the clerk.

Carter Code, sec. 112; Charlton Code, sec. 112.

U. S. *v.* Homer Bird (1 Alaska Rep., 379).

Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 724). "In this case the court held that the action of the trial court upon an application for a continuance was purely a matter of discretion, and not subject to review by this court, unless it be clearly shown that such discretion has been abused; and in this case it could not be said that an abuse of discretion was clearly shown."

State *v.* O'Neal (9 Pac. Rep., 284).
State *v.* Hawkins (23 Pac. Rep., 475).
State *v.* Fiester (50 Pac. Rep., 561).
State *v.* Howe (44 Pac. Rep., 672).
State *v.* Wong Gee (57 Pac. Rep., 914).
State *v.* Birchard (59 Pac. Rep. 468).
State *v.* Leonard (3 Or. Rep. 157).
State *v.* Breaw (78 Pac. Rep., 896).
State *v.* Walton (91 Pac. Rep., 494).

May be refused unless party consents to take deposition of witness.

SEC. 2222. That when an application is made for the postponement of a trial, the court may, in its discretion and in the furtherance of justice, require as a condition precedent to granting the same that the party applying therefor consent that the deposition of a witness or witnesses present may be taken and read on the trial of the case, and unless such consent be given may refuse to allow such postponement for any cause.

Carter Code, sec. 113; Charlton Code, sec. 113.

State *v.* Bowker (38 Pac. Rep., 124).

Order for taking the deposition.

SEC. 2223. That when such consent is given, the court must make an order appointing some proper time and place for taking the deposition of such witness, either by the judge thereof or before some suitable person to be named therein as commissioner, upon either written or oral interrogatories.

Carter Code, sec. 114; Charlton Code, sec. 114.

Deposition to be filed, and when may be read.

SEC. 2224. That upon the making of the order provided in the last preceding section, the deposition must be taken and filed in court, and may be read on the trial of the case, in like manner and with like effect and subject to the same objections as in civil cases.

Carter Code, sec. 115; Charlton Code, sec. 115.

When court may order indictment discharged for want of prosecution.

SEC. 2225. That if, when the indictment is called for trial, the defendant appear for trial, and the district attorney is not ready and does not show any sufficient cause for postponing the trial, the court must order the indictment to be discharged, unless, being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

Carter Code, sec. 116; Charlton Code, sec. 116.

Effect of such discharge.

SEC. 2226. That if the court order the indictment to be discharged, the order is not a bar to another action for the same crime, unless the court so direct; and if the court so direct, judgment of acquittal must be entered.

Carter Code, sec. 117; Charlton Code, sec. 117.

Proceeding upon discharge in relation to bail.

SEC. 2227. That if, upon the discharge of the indictment, the court give a judgment of acquittal, the same proceedings must be had thereon, in relation to the custody of the defendant, his bail or money deposited in lieu thereof, as are prescribed in section twenty-two hundred and four of this title.

Carter Code, sec. 118; Charlton Code, sec. 118.



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# CHAPTER FOURTEEN.

## OF THE FORMATION OF THE TRIAL JURY.


| Sec. | | Sec. | |
|---|---|---|---|
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| 2229. | Formation of jury. | 2240. | Trial of challenge. |
| 2230. | Challenge to the panel. | 2241. | Proceedings and evidence on trial of challenge. |
| 2231. | Peremptory challenges defined. | 2242. | Challenge may be oral. |
| 2232. | Challenge for cause defined. | 2243. | Challenges, by whom and how taken. |
| 2233. | General causes of challenge. | 2244. | Peremptory challenges, number of. |
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| 2235. | Challenge for implied bias. | | |
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Mar. 3, 1899.
30 Stat. L., 1297–1299.
Trial jurors, how selected.

SEC. 2228. That jurors for the trial of persons accused of any of the crimes defined in the laws of the United States applicable to the District of Alaska, as hereby revised and codified, and for the trial of issues of fact in civil actions, shall be selected and summoned in the manner prescribed by the laws of the United States with respect to jurors of the United States district and circuit courts, and shall have the same qualifications and be entitled to the same exemptions as are provided in chapter four, Title XV of this act in the case of grand juries.

Carter Code, sec. 119; Charlton Code, sec. 119.

NOTE.—See 21 Stat. L., 43; act June 30, 1879, as to drawing of jurors.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 769).

NOTE.—See sec. 1002, chap. 16, Code of Civil Procedure.

For qualifications and exemptions see secs. 2119 to 2121, chap. 4 of this title, ante.

Formation of jury.

SEC. 2229. The trial juries shall be formed as follows: When the action is called for trial the clerk shall draw from the trial-jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders or the body of the District so many qualified persons as may be necessary to complete the jury. Whenever, as in this section provided, the marshal shall summon more than one person at a time from the bystanders or the body of the District, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots and deposit the same in the trial-jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term. The jury shall consist of twelve persons, unless in trials for misdemeanors the parties consent to a less number. Such consent shall be entered in the journal.

Carter Code, sec. 120; Charlton Code, sec. 120.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 769). Mosseau *v.* Veeder (2 Or. Rep., 114). Bloch *v.* Multnomah County (35 Pac. Rep., 30). State *v.* Savage (60 Pac. Rep., 610).

NOTE.—See also sec. 1003, chap. 16, Code of Civil Procedure.

Challenge to the panel.

SEC. 2230. That no challenge shall be made or allowed to the panel. A challenge is an objection to a particular juror, and may be either

First. Peremptory; or,

Second. For cause.

Carter Code, sec. 121; Charlton Code, sec. 121.

Fitzhugh *v.* State (2 Or. Rep., 227). State *v.* Dale (8 Or. Rep., 229). State *v.* Savage (60 Pac. Rep., 610).

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Peremptory challenges defined.

SEC. 2231. That a peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Carter Code, sec. 122; Charlton Code, sec. 122.

State *v.* Steeves (43 Pac. Rep., 947).

Challenge for cause defined.

SEC. 2232. That a challenge for cause is an objection to a juror, and may be either—

First. General; that the juror is disqualified from serving in any action; or,

Second. Particular; that he is disqualified from serving in the action on trial.

Carter Code, sec. 123; Charlton Code, sec. 123.

State *v.* Ching Ling (18 Pac. Rep., 844). State *v.* Harding (19 Pac. Rep., 449). State *v.* Miller (81 Pac. Rep., 362).

General causes of challenge.

SEC. 2233. That general causes of challenge are:

First. A conviction for felony;

Second. A want of any of the qualifications prescribed by law for a juror;

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of juror.

Carter Code, sec. 124; Charlton Code, sec. 124.

State *v.* McDonald (8 Or. Rep., 113). State *v.* Powers (10 Or. Rep., 145).

NOTE.—For qualifications and exemptions see secs. 2119 to 2121, chap. 4, of this title, ante.

Particular causes of challenge.

SEC. 2234. That particular causes of challenge are of two kinds—

First. For such bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

Second. For the existence of a state of mind on the part of a juror in reference to the action or to either party which satisfies the trier, in the exercise of a sound discretion, that he can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

Carter Code, sec. 125; Charlton Code, sec. 125.

Rosencranz *v.* U. S. (155 Fed. Rep., 38; 83 C. C. A., 634; 3 Alaska Rep., 778). State *v.* Miller (81 Pac. Rep., 362).

Challenge for implied bias.

SEC. 2235. That a challenge for implied bias may be taken for any of the following causes, and for no other:

First. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the crime charged in the indictment, or the person indorsed thereon as the prosecutor, or to the defendant.

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, with the defendant, or the person alleged to be injured by the crime charged in the indictment, or indorsed thereon as prosecutor, or being a member of the family, a partner in business with or in the employment on wages for either of such persons, or being surety or bail in the action or otherwise for the defendant.

Third. Having served on the grand jury which found the indictment, or on a cororner's jury which inquired into the death of a person whose death is the subject of the indictment.

Fourth. Having been one of a jury formerly sworn in the same action, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

Fifth. Having served as a juror in a civil action, suit, or proceeding brought against the defendant for substantially the same act charged as a crime.

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Sixth. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude a person from finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Carter Code, sec. 126; Charlton Code, sec. 126.

Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 770). Paddock *v.* Welts (2 Barb., Ch. 333). Ford *v.* Umatilla County (16 Pac. Rep., 33).

Challenge for actual bias.

SEC. 2236. That a challenge for actual bias may be taken for the cause mentioned in the second subdivision of section twenty-two hundred and thirty-seven. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror can not disregard such opinion and try the issue impartially.

Carter Code, sec. 127; Charlton Code, sec. 127.

NOTE.—The reference to sec. 2237 (Carter and Charlton, 128) above is obviously erroneous. The reference should be sec. 2235, (Carter and Charlton, 126).

Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 663; 1 Alaska, 770). Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 771). Dolan *v.* U. S. (116 Fed. Rep., 578; 54 C. A. A., 34; 1 Alaska Rep., 771). Dolan *v.* U. S. (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 695). Rosencranz *v.* U. S. (155 Fed. Rep., 38; 3 Alaska Rep., 778). Griggs *v.* U. S. 158 (Fed. Rep., 572; 3 Alaska Rep., 778). State *v.* Saunders (12 Pac. Rep., 441). Kulmi *v.* S. P. Co. (28 Pac. Rep., 637). State *v.* Ingram (31 Pac. Rep., 1049). State *v.* Brown (41 Pac. Rep., 1042). State *v.* Kelly (42 Pac. Rep., 217). State *v.* Olberman (55 Pac. Rep., 886). State *v.* Savage (60 Pac. Rep., 610). State *v.* McDaniel (65 Pac. Rep., 520). State *v.* Tom (8 Or. Rep., 177). S. P. Co. *v.* Rauh (49 Fed. Rep., 699). Williams *v.* Poppleton (3 Or. Rep., 140). State *v.* Miller (81 Pac. Rep., 362). State *v.* Megorden (88 Pac. Rep., 306).

Exemption from service on jury.

SEC. 2237. That an exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Carter Code, sec. 128; Charlton Code, sec. 128.

NOTE.—See sec. 2121, chap. 4, of this title.

Challenges, how and when taken.

SEC. 2238. That all challenges shall be taken first by the defendant and then by the plaintiff, and the defendant shall exhaust his challenges to a particular juror before the plaintiff begins. All challenges shall be taken to each juror as he is drawn and appears, and before another juror is drawn, unless the court, for good cause shown, shall permit a challenge to be taken afterwards, and before the number of the jury is completed.

Carter Code, sec. 129; Charlton Code, sec. 129.

Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 663; 1 Alaska Rep., 769). State *v.* McDonald (8 Or. Rep., 113). Garrison *v.* Portland (2 Or. Rep., 123).

Order of taking challenges.

SEC. 2239. That the challenge of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. For general disqualification.

Second. For implied bias.

Third. For actual bias.

Fourth. Peremptory; but either party may take peremptory challenge at any time before his right of challenge ceases.

Carter Code, sec. 130; Charlton Code, sec. 130.

Hawkins *v.* U. S. (116 Fed. Rep., 569; 53 C. C. A., 663; 1 Alaska Rep., 769). Garrison v. Portland (2 Or. Rep., 123).

Trial of challenge.

SEC. 2240. That the challenge may be excepted to by the adverse party for insufficiency, and if so the court shall determine the suffi-

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ciency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so the court shall try the issue and determine the law and the fact.

Carter Code, sec. 131; Charlton Code, sec. 131.

State *v.* Tom (8 Or. Rep., 177). | S. P. Co. *v.* Rauh (49 Fed. Rep., 699).
Hayden *v.* Long (8 Or. Rep., 245). |

Proceedings and evidence on trial of challenge.

SEC. 2241. That upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The jurors challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded. But if determined or found otherwise, it shall be disallowed.

Carter Code, sec. 132; Charlton Code, sec. 132.

Challenge may be oral.

SEC. 2242. That the challenge, the exception, and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

Carter Code, sec. 133; Charlton Code, sec. 133.

Challenges, by whom, and how taken.

SEC. 2243. All challenges, whether peremptory or for cause, may be taken by the United States or defendant, but when several defendants are tried together they can not sever their challenges, but must join therein.

Carter Code, sec. 134; Charlton Code, sec. 134.

Peremptory challenges, number of.

SEC. 2244. That if the crime charged in the indictment be punishable with death, the defendant shall be entitled to twenty and the United States to ten peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to five peremptory challenges, and in all other cases each party shall be entitled to three peremptory challenges.

Carter Code, sec. 135; Charlton Code, sec. 135.

Oath of jury.

SEC. 2245. That as soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors in substance, that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

Carter Code, sec. 136; Charlton Code, sec. 136.

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## CHAPTER FIFTEEN.

### OF THE CONDUCT OF THE TRIAL AND MISCELLANEOUS PROVISIONS RELATING THERETO.


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Mar. 3, 1899.
30 Stat. L., 1299–1302.
Order of proceedings on trial.

SEC. 2246. That after the jury is impaneled and sworn, the trial shall proceed in the following order:

First. A counsel for the United States must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

Second. The defendant, or his counsel, must then state his defense, and may briefly state the evidence he expects to offer in support of it.

Third. The United States must first produce its evidence; and the defendant will then produce his evidence.

Fourth. The United States will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permit it to offer evidence in chief.

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing if either party requests it.

Sixth. When the evidence is concluded, unless the case be submitted without argument, the counsel for the United States shall commence, the defendant or his counsel follow, and the counsel for the United States conclude, the argument to the jury.

Seventh. The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury; which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court, if either party requests it before the argument of the trial is commenced; such charge or charges, or any other charge or instructions provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement, and returned with their verdict into court, and shall remain on file with papers of the case.

Carter Code, sec. 137; Charlton Code, sec. 137.

Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 730). "In this case the court held, that a judgment of conviction in a criminal case will not be reversed by an appellate court because of the order in which the trial court permitted the introduction of evidence, unless there was an abuse of discretion prejudicial to defendant."

Hornstein *v.* U. S. (155 Fed. Rep., 48; 83 C. C. A., 644; 3 Alaska Rep., 731). Long *v.* Lander (10 Or. Rep., 175). State *v.* Moore (48 Pac. Rep., 468). Dolph *v.* Barney (5 Or. Rep., 209). State *v.* Hunsaker (19 Pac. Rep., 605). Davis *v.* Emmons (51 Pac. Rep., 652). Stimson *v.* Estes (3 Or. Rep., 522). State *v.* Dilley (13 Pac. Rep., 648). Hurst *v.* Burnside (8 Pac. Rep., 888). State *v.* Birchard (59 Pac. Rep., 468). State *v.* Morse (57 Pac. Rep., 631). Kelly *v.* Highfield (14 Pac. Rep., 744). State *v.* Hatcher (44 Pac. Rep., 584). Tenny *v.* Mulvaney (8 Or. Rep., 522). State *v.* Mimms (61 Pac. Rep., 888). State *v.* Hawkins (23 Pac. Rep., 475). State *v.* Lee Ping Bow (10 Or. Rep., 31). State *v.* Anderson (10 Or. Rep., 456). State *v.* Drake (4 Pac. Rep., 1204). State *v.* Abrams (8 Pac. Rep., 327). Boyd *v.* Portland El. Co. (62 Pac. Rep., 378). Watson *v.* Southern Or. Co. (65 Pac. Rep., 986). State *v.* Brown (41 Pac. Rep., 1042). Smith *v.* Lounsdale (6 Or. Rep., 82). State *v.* Armstrong (73 Pac. Rep., 1023). Casto *v.* Murray (81 Pac. Rep., 388). State *v.* Blodgett (92 Pac. Rep., 820).

NOTE.—As to instructions see sec. 1023, Chap. 17, Code Civil Procedure.

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Conduct of jury after case is submitted.

SEC. 2247. That when a case is finally submitted, the jurors must be kept together in some convenient place under the charge of an officer until they agree upon a verdict or are discharged by the court; the officer having them in charge shall not suffer any communication to be made to them nor make any himself, except to ask them if they have agreed upon a verdict, unless by order of the court; nor shall he communicate to any person, before the verdict is delivered, any matter in relation to the state of their deliberations; and if the jurors be permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with, nor to suffer themselves to be addressed by, any person, nor to listen to any conversation on the subject of the trial, nor to form or express an opinion thereon, until the case is finally submitted to them.

Carter Code, sec. 138; Charlton Code, sec. 138.

State *v.* Shaffer (32 Pac. Rep., 545).
State *v.* Olberman (55 Pac. Rep. 886).
State *v.* Garrand (5 Or. Rep., 228).
State *v.* Ivanhoe (57 Pac. Rep., 317).
Nichelson *v.* Smith (14 Pac. Rep., 40).

For what cause court may discharge jury.

SEC. 2248. That the court may discharge a jury without prejudice to the prosecution for the sickness of a juror, the corruption of a juror, or other accident or calamity, or because there is no probability of the jurors agreeing, and the reason for the discharge shall be entered on the journal.

Carter Code, sec. 139; Charlton Code, sec. 139.

Jury may be polled.

SEC. 2249. That when the jurors agree upon their verdict they must be conducted into court by the officer having them in charge; and before the verdict is accepted, the jury may be polled at the request of either the district attorney or the defendant.

Carter Code, sec. 140; Charlton Code, sec. 140.

When jury to ascertain value of property.

SEC. 2250. That when an indictment charges an offense against property by larceny, embezzlement, or obtaining by false pretenses, the jury, on conviction, shall ascertain and declare in the verdict the value of the property stolen, embezzled, or falsely obtained.

Carter Code, sec. 141; Charlton Code, sec. 141.

NOTE. See sec. 1929, chap. 3, Criminal Code, Title XIV.

Intoxication no excuse for crime.

When to be considered.

SEC. 2251. That no act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition; but whenever the actual existence of any particular motive, purpose, or intent is a necessary element to constitute any particular species or degrees of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time in determining the purpose, motive, or intent with which he committed the act.

Carter Code, sec. 142; Charlton Code, sec. 142.

State *v.* Zorn (30 Pac. Rep., 317).
State *v.* Hansen (35 Pac. Rep., 976).
State *v.* Lavery (58 Pac. Rep., 107).
State *v.* Weaver (58 Pac. Rep., 109).
State *v.* Murray (5 Pac. Rep., 55).
State *v.* Hansen (36 Pac. Rep., 296).
State v. Blodgett (92 Pac. Rep., 820).

Defendant to be convicted in the lowest degree in case of doubt.

SEC. 2252. That when it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

Carter Code, sec. 143; Charlton Code, sec. 143.

State *v.* Grant (7 Or. Rep., 422).
State *v.* Cody (23 Pac. Rep., 891).
State *v.* Hanlon (48 Pac. Rep., 353).
State *v.* Ellsworth (47 Pac. Rep., 199).
State *v.* Brenton (87 Pac. Rep., 535).

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When defendants jointly indicted entitled to separate trial.

SEC. 2253. That when two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately; but in other cases defendants jointly indicted may be tried separately or jointly, in the discretion of the court.

Carter Code, sec. 144; Charlton Code, sec. 144.

State *v.* Kline (93 Pac. Rep., 237).

When one of several defendants may be discharged as a witness for the State.

SEC. 2254. That when two or more persons are charged in the same indictment, the court may, at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, so that he may be a witness for the United States.

Carter Code, sec. 145; Charlton Code, sec. 145.

State *v.* Magone (51 Pac. Rep., 453). State *v.* Steeves (43 Pac. Rep., 947). State *v.* White (87 Pac. Rep., 138).

When one may be discharged to be a witness for defendant.

SEC. 2255. That when two or more persons are charged in the same indictment, and the court is of the opinion that, in regard to a particular defendant, there is not sufficient evidence to put him on his defense, it must, if requested by another defendant then on trial, order him to be discharged from the indictment, before the evidence is closed, that he may be a witness for his co-defendant.

Carter Code, sec. 146; Charlton Code, sec. 146.

Latshaw *v.* Territory (1 Or. Rep., 141). State *v.* White (87 Pac. Rep., 138).

Effect of such discharge.

SEC. 2256. That the order provided for in the last two sections, when made, must state the reasons for making it; and it is an acquittal of the defendant discharged, and a bar to another prosecution for the same crime.

Carter Code, sec. 147; Charlton Code, sec. 147.

Law of evidence in criminal cases.

SEC. 2257. That the law of evidence in civil actions is also the law of evidence in criminal actions and proceedings, except as otherwise specially provided in this act.

Carter Code, sec. 148; Charlton Code, sec. 148.

Bird *v.* U. S. (180 U. S. Rep., 356; 1 Alaska Rep., 740). Fitzpatrick *v.* U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 740). Jackson *v.* U. S. (102 Fed. Rep., 473; 42 C. C. A., 452; 1 Alaska Rep., 740). Hardy *v.* U. S. (186 U. S. Rep., 224; 1 Alaska Rep., 740). Tlakoo-yel-lee *v.* U. S. (167 U. S. Rep., 274; 1 Alaska Rep., 741). Allen *v.* U. S. (115 Fed. Rep., 3; 52 C. C. A., 597; 1 Alaska Rep., 724). U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 726). Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 727). Dolan *v.* U. S. (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 676). Binns *v.* U. S. (194 U. S. Rep., 486; 2 Alaska Rep., 675). Ball *v.* U. S. (147 Fed. Rep., 32; 78 C. C. A., 126; 3 Alaska Rep., 731). Griggs *v.* U. S. (158 Fed. Rep., 572; 85 C. C. A., 596; 3 Alaska Rep., 731). Perovich *v.* U. S. (205 U. S. Rep., 86; 27 Sup. Ct., 456; 51 L. Ed., 722; 3 Alaska Rep., 731). State *v.* O'Neil (9 Pac. Rep., 284). State *v.* Mah Jim (10 Pac. Rep., 306). Howell *v.* State (1 Or. Rep., 241). State *v.* Robinson (48 Pac. Rep., 357). State *v.* Garrand (5 Or. Rep., 216). State *v.* Hale (7 Pac. Rep., 523). State *v.* Branton (87 Pac. Rep., 535).

*Confessions*: State *v.* Wintzingerode (9 Or. Rep., 153). State *v.* Moran (14 Pac. Rep., 419). State *v.* Leonard (3 Or. Rep., 157). State *v.* Porter (49 Pac. Rep., 964). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Reinhart (38 Pac. Rep., 822). State *v.* You (25 Rep., 355). State *v.* Heidenrich (45 Pac. Rep., 755). State *v.* Taylor (3 Or. Rep,, 10)

*Res gestae*: State *v.* Porter (49 Pac. Rep., 964). State *v.* Isenhart (52 Pac. Rep., 569). State *v.* Marco (50 Pac. Rep., 799). State *v.* Glass (5 Or. Rep., 73). State *v.* Ching Ling (18 Pac. Rep., 844). State *v.* Garrand (5 Or. Rep., 216). State *v.* Roberts (13 Pac. Rep., 896). State *v.* Henderson (32 Pac. Rep., 1030). State *v.* Brown (41 Pac. Rep., 1042).

*Conspiracy*: State *v.* Tice (48 Pac. Rep., 367). State *v.* Magone (51 Pac. Rep., 452). State *v.* Hinkle (54 Pac. Rep., 155).

*Statements too remote*: State *v.* Ching Ling (18 Pac. Rep., 844). State *v.* Sargent (49 Pac. Rep., 899).

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*Ordinary consequence of act*: State v. Mason (28 Pac. Rep., 130; 26 L. R. A., 779). State v. Bock (88 Pac. Rep., 318).

*Suppression of evidence*: State v. Magers (57 Pac. Rep., 197).

*Dying declarations*: State v. Saunders (12 Pac. Rep., 441). State v. Shaffer (32 Pac. Rep., 545). State v. Foot You (32 Pac. Rep., 1031). State v. Fletcher (33 Pac. Rep., 575). State v. Poole (25 Pac. Rep., 375). State v. Garrand (5 Or. Rep., 216). State v. Ah Lee (8 Or. Rep., 214). Goodall v. State (1 Or. Rep., 334). State v. Gray (74 Pac. Rep., 927).

*Corpus delicti*: State v. Robinson (48 Pac. Rep., 357).

*Flight as evidence of guilt*: State v. Garrand (5 Or. Rep., 216).

*Possession of stolen property*: State v. Hale (7 Pac. Rep., 523).

*Good reputation*: State v. Garrand (5 Or. Rep., 156). State v. Porter (49 Pac. Rep., 964).

*Impeaching character*: Osmun v. Winters (35 Pac. Rep., 250). First Nat. Bank v. Comm. Assn. (52 Pac. Rep., 1052). Sheppard v. Yocum (10 Or. Rep., 402). Cooper v. Phipps (33 Pac. Rep., 985; 22 L. R. A., 836). Munkers v. Farmers Ins. Co. (46 Pac. Rep., 850). Kelly v. Highfeld (14 Pac. Rep., 744). Stamper v. Raymond 62 Pac. Rep., 20). State v. Lee (79 Pac. Rep., 577).

NOTE: For impeachment generally, see secs. 1501 to 1502, chap. 64, Code Civil Procedure. Title XIII.

*Presumption of innocence*: State v. Roberts (13 Pac. Rep., 896). Milliorn v. Clow (70 Pac. Rep., 398).

*Reasonable doubt*: State v. Glass (5 Or. Rep., 73). State v. Ah Lee (7 Or. Rep., 237). State v. Connolly (3 Or. Rep., 73). State v. Morey (35 Pac. Rep., 655). State v. Roberts (13 Pac. Rep., 896). State v. Ching Ling (18 Pac. Rep., 844). State v. Crockett (65 Pac. Rep., 447).

Defendant can be witness.

SEC. 2258. That in the trial of or examination upon all indictments, complaints, information, and other proceedings before any court, magistrate, jury, or other tribunal, against persons accused or charged with the commission of crimes or offenses, the person so charged or accused shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the court, or to the discrimination of the magistrate, or other tribunal before which such testimony may be given: *Provided*, That his waiver of such right shall not create any presumption against him; that such defendant or accused, when offering his testimony as a witness in his own behalf, shall be deemed to have given to the prosecution a right to cross-examination.

*Proviso.* No presumption from waiver.

Carter Code, sec. 149; Charlton Code, sec. 149.

U. S. v. Richards & Jourden (1 Alaska Rep., 623). State v. Anderson (10 Or. Rep., 448). State v. Lurch (6 Pac. Rep., 411). State v. Abrams (8 Pac. Rep., 327). State v. Gallo (23 Pac. Rep., 264). State v. Moore (48 Pac. Rep., 468). State v. Clements (14 Pac. Rep., 410). State v. Miller (74 Pac. Rep., 658). State v. Beal (95 Pac. Rep., 165). Fitzpatrick v. U. S. (178 U. S. Rep., 304; 1 Alaska Rep., 838). State v. Magers (58 Pac. Rep., 892). State v. Saunders (12 Pac. Rep., 441). State v. Bartmess (54 Pac. Rep., 167). State v. Weaver (58 Pac. Rep., 109). State v. Porter (49 Pac. Rep., 964). State v. Drake (4 Pac. Rep., 1204). State v. Bartlett (93 Pac. Rep., 243). State v. Len Woom (107 Pac. Rep., 974).

Husband or wife can be witness for or against each other in certain cases.

SEC. 2259. That in all criminal actions where the husband is the party accused the wife shall be a competent witness, and when the wife is the party accused the husband shall be a competent witness; but neither husband nor wife, in such cases, shall be compelled or allowed to testify in such case unless by consent of both of them: *Provided*, That in all cases of personal violence upon either by the other, the injured party, husband or wife, shall be allowed to testify against the other.

*Proviso.* Personal violence.

Carter Code, sec. 150; Charlton Code, sec. 150.

State v. McGrath (57 Pac. Rep., 321). State v. Hatcher (44 Pac. Rep., 584). State v. Luper (91 Pac. Rep., 444; 98 Pac. Rep., 811).

Evidence in criminal actions to be given orally, except.

SEC. 2260. That in a criminal action the testimony of a witness must be given orally in the presence of the court and jury, except in the case of a witness whose testimony is taken by deposition, by order

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of the court, in pursuance of the consent of the parties, as provided in chapter thirteen of this act.

Carter Code, sec. 151; Charlton Code, sec. 151.

State *v.* Saunders (12 Pac. Rep., 441).

Error in proceedings not material, unless it prejudice substantial rights of defendant.

SEC. 2261. That neither a departure from the form or mode prescribed by this act, in respect to any pleadings or proceedings, nor any error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice in respect to a substantial right.

Carter Code, sec. 152; Charlton Code, sec. 152.

Testimony of accomplice must be corroborated.

SEC. 2262. That a conviction can not be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, and the corroboration is not sufficient if it merely show the commission of the crime or the circumstances of the commission.

Carter Code, sec. 153; Charlton Code, sec. 153.

Bird *v.* United States (23 Sup. Ct., Rep., 42; 1 Alaska Rep., 752). Dolan *v.* United States (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 676). State *v.* Odell (8 Or. Rep., 31). State *v.* Robinson (48 Pac. Rep., 357). State *v.* Tice (48 Pac. Rep., 367). State *v.* Townsend (23 Pac. Rep., 968). State *v.* Scott (42 Pac. Rep., 1).

*Who is accomplice*: State *v.* Carr (42 Pac. Rep., 215). State *v.* Jarvis (23 Pac. Rep., 251). State *v.* Scott (42 Pac. Rep., 1). State *v.* Light (21 Pac. Rep., 132). State *v.* Knighten (64 Pac. Rep., 866). State *v.* Roberts (13 Pac. Rep., 896).

Evidence on trial for false pretenses.

SEC. 2263. That upon a trial for having, by any false pretense, obtained the signature of any person to any written instrument, or obtained from any person any valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing; but such pretense, or some note or memorandum thereof, must be in writing, and either subscribed by or in the handwriting of the defendant. This section does not apply to an action for falsely representing or personating another, and in such assumed character receiving any such valuable thing.

Carter Code, sec. 154; Charlton Code, sec. 154.

State *v.* Lurch (6 Pac. Rep., 405). State *v.* Renick (56 Pac. Rep., 275; 44 L. R. A., 266). State *v.* Germain (103 Pac. Rep., 521).

NOTE.—See sec. 1934, chap. 3, Criminal Code.

Evidence of female abducted or seduced must be corroborated.

SEC. 2264. That upon a trial for inveigling, enticing, or taking away an unmarried female for the purposes of prostitution, or for having seduced and had illicit connection with an unmarried female, the defendant can not be convicted upon the testimony of the female injured, unless she is corroborated by some other evidence tending to connect the defendant with the commission of the crime.

Carter Code, sec. 155; Charlton Code, sec. 155.

Court to decide questions of law; knowledge of the court.

SEC. 2265. That all questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is by this act made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

Carter Code, sec. 156; Charlton Code, sec. 156.

State *v.* Moy Looke (7 Or. Rep., 54). State *v.* Reinhart (38 Pac. Rep., 822).

NOTE.—See citations under sec. 2160, chap. 7, ante.

Jury to receive the law from the court and to decide the facts.

SEC. 2266. That although the jury have the power to find a general verdict, which includes questions of law as well as fact, they are bound, nevertheless, to receive as law what is laid down as such by

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the court; but all questions of fact other than those mentioned in the last section must be decided by the jury, and all evidence thereon addressed to them.

Carter Code, sec. 157; Charlton Code, sec. 157.

State *v.* Daley (103 Pac. Rep., 502).

NOTE.—See citations under sec. 1023, chap. 17, Code Civil Procedure, Title XIII.

Defendant may be committed after appearance.

SEC. 2267. That when a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him to be committed to actual custody to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

Carter Code, sec. 158; Charlton Code, sec. 158.

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# CHAPTER SIXTEEN.

## OF THE VERDICT.


Sec.
2268. Jury may convict of any degree of the crime charged, or of an attempt to commit the crime.
2269. Jury may convict of any crime necessarily included in that charged.
2270. Jury may give verdict as to defendants concerning whom they agree and cause others to be tried again.
2271. Custody of defendant when verdict given against him.
2272. Proceeding when defendant acquitted on account of insanity.


Mar. 3, 1899.

30 Stat. L., 1302–1303.

Jury may convict of any degree of the crime charged, or of an attempt to commit the crime.

SEC. 2268. That upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment and guilty of any degree inferior thereto, or of an attempt to commit the crime or any such inferior degree thereof.

Carter Code, sec. 159; Charlton Code, sec. 159.

U. S. *v.* Owens (2 Alaska Rep., 482–484). State *v.* Wintzingerode (8 Or. Rep., 153). Fitzhugh *v.* State (2 Or. Rep., 217). State *v.* Grant (7 Or. Rep., 414). State *v.* Hanlon (48 Pac. Rep., 353). State *v.* Taylor (3 Or. Rep., 10). State *v.* Savage (60 Pac. Rep., 610). State *v.* Ryan (16 Pac. Rep., 417). State *v.* Ah Lee (7 Or. Rep., 237). State *v.* Whitney and Hibert (7 Or. Rep., 386). State *v.* Brenton (87 Pac. Rep., 535).

Jury may convict of any crime necessarily included in that charged.

SEC. 2269. That in all cases the defendant may be found guilty of any crime the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit such crime.

Carter Code, sec. 160; Charlton Code, sec. 160.

State *v.* Savage (60 Pac. Rep., 610). State *v.* Hanlon (48 Pac. Rep., 353). State *v.* Ellsworth (47 Pac. Rep., 199). State *v.* Steeves (43 Pac. Rep., 947). State *v.* Cody (23 Pac. Rep., 891).

Jury may give verdict as to defendants concerning whom they agree and cause others to be tried again.

SEC. 2270. That on an indictment against several, if the jury can not agree upon a verdict as to all, they may give a verdict as to those in regard to whom they do agree, on which a judgment must be given accordingly; and the case as to the rest of the defendants may be tried by another jury

Carter Code, sec. 161; Charlton Code, sec. 161.

Custody of defendant when verdict given against him.

SEC. 2271. That if a verdict be given against the defendant, he must be remanded if in custody; if he has given bail he may be permitted to await the judgment of the court upon the verdict. When

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committed his bail is exonerated, or if money be deposited in lieu thereof it must be refunded to the defendant.

Carter Code, sec. 162; Charlton Code, sec. 162.

Proceedings when defendant acquitted on account of insanity.

SEC. 2272. That if the defense be the insanity of the defendant the jury must be instructed, if they find him not guilty on that ground, to state that fact in their verdict, and the court must thereupon, if it deems his being at large dangerous to the public peace or safety, order him to be committed to any lunatic asylum authorized by the United States to receive and keep such persons until he become sane or be otherwise discharged therefrom by authority of law.

Carter Code, sec. 163; Charlton Code, sec. 163.

State *v.* Daly (103 Pac. Rep., 502).

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# CHAPTER SEVENTEEN.

## OF EXCEPTIONS AND NEW TRIAL.


Sec.
2273. Definition of exception.
2274. Exceptions, how taken.
2275. When exceptions not taken or allowed.
2276. Definition of new trial.
2277. For what causes granted.
2278. Motion for new trial.
2279. Same, when made.
2280. Motion should state grounds.
2281. Counter affidavit, when allowed.


Mar. 3, 1899.

30 Stat. L., 1303–1304.

Definition of exception.

SEC. 2273. That an exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission or rejection of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision.

Carter Code, sec. 164; Charlton Code, sec. 164.

Bird *v.* U. S. (180 U. S., Rep., 356; 1 Alaska Rep., 727). Stockslager *v.* U. S. (116 Fed. Rep., 590; 54 C. C. A., 46; 1 Alaska Rep., 728). Bennett *v.* Harkrader (158 U. S. Rep., 444; 1 Alaska Rep., 700). McKinley Creek Min. Co. *v.* United Alaska Min. Co. (22 Sup. Ct. Rep., 84; 1 Alaska, 701). Corbus *v.* Leonhardt (114 Fed. Rep., 10; 51 C. C. A., 636; 1 Alaska Rep., 831). Black *v.* Teeter (1 Alaska Rep., 561). Owens *v.* U. S. (130 Fed. Rep., 279; 64 C. C. A., 525; 2 Alaska Rep., 683). Dolan *v.* U. S. (123 Fed. Rep., 52; 59 C. C. A., 176; 2 Alaska Rep., 751). Walton *v.* Wild Goose Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 752). Dalton *v.* Moore (141 Fed. Rep., 311; 72 C. C. A., 459; 2 Alaska Rep., 752). Hoxey *v.* Nodine (123 Fed. Rep., 379; 61 C. C. A., 223; 2 Alaska Rep., 752). Williams, Adminr. *v.* Alaska Com. Co. (2 Alaska Rep., 43). Perovich *v.* U. S. (205 U. S. Rep., 86; 27 Sup. Ct., 456; 3 Alaska Rep., 764). Ball *v.* U. S. (147 Fed Rep., 32; 78 C. C. A., 126; 3 Alaska Rep., 764). Vulko *v.* Perovich (205 U. S. Rep., 722; 51 L. Ed., 86). Hornstein *v.* U. S. (155 Fed. Rep., 48; 83 C. C. A., 644; 3 Alaska Rep., 731).

*Instructions*: Kearney *v.* Snodgrass (7 Pac. Rep., 309). Nickum *v.* Gaston (35 Pac. Rep., 31). Williamson *v.* N. P. Lbr. Co. (73 Pac. Rep., 43). Scott *v.* Astoria R. Co. (72 Pac. Rep., 594). Busch *v.* Robinson (81 Pac. Rep., 237). Marks *v.* Herren (83 Pac. Rep. 385). State *v.* Smith (83 Pac. Rep., 865). State *v.* Watson (85 Pac Rep., 336). Baker County *v.* Huntington (87 Pac. Rep., 1036). State *v.* White (87 Pac. Rep., 137). State *v.* Megorden (88 Pac. Rep., 306). State *v.* Thompson (88 Pac. Rep., 583). State *v.* Bock (88 Pac. Rep., 318). Baines *v.* Coos Bay R. & E. R. & N. Co. (89 Pac. Rep., 371). Latourette *v.* Meldrum (90 Pac. Rep., 503). Gilman *v.* Cochran (90 Pac. Rep., 1001). State *v.* Garrand (5 Or. Rep., 216).

*Bill of exceptions* (*civil*). Alaska Com. Co. *v.* Dinkelspiel (126 Fed. Rep., 164; 61 C. C. A., 108; 2 Alaska Rep., 723). Piper *v.* Cashel (122 Fed. Rep., 614; 58 C. C. A., 396; 2 Alaska Rep., 645). Fisher *v.* Kelly (38 Pac. Rep., 67). Roberts *v.* Parish (22 Pac. Rep., 136). Farrell *v.* Oregon Gold Co. (49 Pac. Rep., 876). Trummer *v.* Conrad (51 Pac. Rep., 447). Osburn *v.* Graves (6 Pac. Rep., 227). Van Bibber *v.* Fields (36 Pac. Rep., 526). Balfour *v.* Day (52 Pac. Rep., 510). Ankeny *v.* Fairview Mill Co. (10 Or. Rep., 395). Morrison *v.* Crawford (7 Or. Rep., 472). Oregon R. Co. *v.* Wright (10 Or. Rep., 162). Kelly *v.* Highfield (14 Pac. Rep., 744). Stanley *v.* Smith (16 Pac. Rep., 174). Tucker *v.* Constable

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(19 Pac. Rep., 13). Craft *v.* Dallas City (27 Pac. Rep., 163). French Live Stock Co. *v.* Springer (58 Pac. Rep., 102). O'Conner *v.* Van Hoy (45 Pac. Rep., 762). McMahon *v.* Duffey (59 Pac. Rep., 184). Nickum *v.* Gaston (33 Pac. Rep., 671). Cleveland Oil Co. *v.* Norwich Ins. Soc. (55 Pac. Rep., 435). Dubois *v.* Perkins (27 Pac. Rep., 1034). Durkee *v.* Carr (63 Pac. Rep., 117). Richards *v.* Fanning (5 Or. Rep., 356). Eaton *v.* O. R. & N. Co. (30 Pac. Rep., 311). Tucker *v.* Salem Flour Mill Co. (16 Pac. Rep., 426). Janeway *v.* Holston (23 Pac. Rep., 850). McQuade *v.* Portland & Vancouver R. Co. (25 Pac. Rep., 26). Reynolds *v.* Jackson County (53 Pac. Rep., 1072). Fiore *v.* Ladd (29 Pac. Rep., 435). Hamilton *v.* Gordon (30 Pac. Rep., 495). Johnson *v.* Oregon S. L. R. Co. (31 Pac. Rep., 283). Atterbury *v.* Portland & V. R. Co. (22 Pac. Rep., 527). Woods *v.* Courteney (17 Pac. Rep., 745). Coffin *v.* Hutchinson (30 Pac. Rep., 424). Shaefer *v.* Stein (45 Pac. Rep., 301). Hedin *v.* Suburban R. Co. (37 Pac. Rep., 540). First Nat. Bank *v.* Fire Assn. Co. (50 Pac. Rep., 568). Nickum *v.* Gaston (35 Pac. Rep., 31). Kearney *v.* Snodgrass (7 Pac. Rep., 309). Beekman *v.* Hamlin (31 Pac. Rep., 707). State *v.* Estes (52 Pac. Rep., 571). Bloch *v.* Salmons (55 Pac. Rep., 438). Hayes *v.* Clifford (72 Pac. Rep., 1). York *v.* Nash (71 Pac. Rep., 59). N. P. Lbr. Co. *v.* Spore (75 Pac. Rep., 890). Beadle *v.* Pain (80 Pac. Rep., 903). Miller *v.* Head Camp (77 Pac. Rep., 83). Casto *v.* Murray (81 Pac. Rep., 388). McClung *v.* McPherson (81 Pac. Rep., 567). Ausplund *v.* Aetna Indemnity Co. (81 Pac. Rep., 1143). McKennon *v.* Higgins (81 Pac. Rep., 581). Ausplund *v.* Higgins (82 Pac. Rep., 12). Annans *v.* Sewell (84 Pac. Rep., 395). Baker County *v.* Huntington (87 Pac. Rep., 1036). Heilner *v.* Smith (88 Pac. Rep., 299). Portland Iron Works *v.* Willett (89 Pac. Rep., 1142). Multnomah County *v.* Willamette Towing Co. (89 Pac. Rep., 389). Scott *v.* Cristensen (89 Pac. Rep., 376). Freeman *v.* Preston (89 Pac. Rep., 375).

*Motion for nonsuit*: Walton *v.* Wild Goose Co. (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 645). Fulkerson *v.* Chisna Min. Co. (122 Fed. Rep., 782; 59 C. C. A., 176; 2 Alaska Rep., 751).

*Bill of exceptions (criminal)*: Allen *v.* U. S. (115 Fed Rep., 3; 52 C. C. A., 597; 1 Alaska Rep., 700). Nelson *v.* U. S. (30 Fed. Rep., 112; 1 Alaska Rep., 756). State *v.* Drake (4 Pac. Rep., 1204). State *v.* McGinnis (20 Pac. Rep., 235). State *v.* Cody (24 Pac. Rep., 895). State *v.* Cook (1 Or. Rep., 25). State *v.* Che Gong (21 Pac. Rep., 882). State *v.* Childers (49 Pac. Rep., 801). Ex parte Wachline (51 Pac. Rep., 1094). State *v.* Foot Yow (32 Pac. Rep., 1031). State *v.* Abrams (8 Pac. Rep., 327). State *v.* Zorn (30 Pac. Rep., 317). State *v.* Gallo (23 Pac. Rep., 264). State *v.* Bartmess (54 Pac. Rep., 167). State *v.* Mason (28 Pac. Rep., 130). State *v.* Clemens (14 Pac. Rep., 410). State *v.* Murray (5 Pac. Rep., 55). State *v.* Jarvis (23 Pac. Rep., 251). State *v.* Jackson (9 Or. Rep., 475). State *v.* Eggleston (77 Pac. Rep., 738). State *v.* Guglielmo (80 Pac. Rep., 103). State *v.* Miller (81 Pac. Rep., 363). State *v.* Megorden (88 Pac. Rep., 306). State *v.* Jennings (89 Pac. Rep., 421). State *v.* Young (96 Pac. Rep., 1067).

Exceptions, how taken.

SEC. 2274. That the point of the exception shall be particularly stated, and may be delivered in writing to the judge or entered in his minutes, and, at the time or afterwards, be corrected until made conformable to the truth.

Carter Code, sec. 165; Charlton Code, sec. 165.

Shelp *v.* U. S. (81 Fed. Rep., 694; 26 C. C. A., 570; 1 Alaska Rep., 728). "In this case the court held that if any part of the charge requires the jury to consider matters not proved, it is the duty of counsel to call the attention of the trial court to the language complained of. A general exception is insufficient to raise the point before an appellate court."

Rogue River Min. Co. *v.* Walker (1 Or. Rep., 341). Eaton *v.* O. R. & N. Co. (30 Pac. Rep., 311). Hadin *v.* Suburban R. Co. (37 Pac. Rep., 540). State *v.* Magone (51 Pac. Rep., 453). Murray *v.* Murray (6 Or. Rep., 17). Langford *v.* Jones (22 Pac. Rep., 1064). Salmon *v.* Cress (29 Pac. Rep., 439). Jenson *v.* Foss (33 Pac. Rep., 537). McAllister *v.* Long (54 Pac. Rep., 194). Oliver *v.* Or. Sugar Co. (76 Pac. Rep., 1086). State *v* Young (96 Pac. Rep., 1067).

NOTE.—And see cases under sec. 2273.

When exceptions not taken or allowed.

SEC. 2275. That the statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

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Carter Code, sec. 166; Charlton Code, 166.

Schooner *Silvia Handy* v. U. S. (143 U. S. Rep., 513; 1 Alaska Rep., 742). Malony v. Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 743). Nelson v. U. S. (30 Fed. Rep., 112; 1 Alaska Rep., 756). Woods v. Beaton (1 Alaska Rep., 344). Woods v. Beaton (2 Alaska Rep. 1). Alaska Com. Co. v. Dinkelspiel (126 Fed. Rep., 164; 61 C. C. A., 108; 2 Alaska Rep., 724). Cook v. Klonas (164 Fed. Rep., 529; 90 C. C. A., 403; 3 Alaska Rep., 753). Dalton v. Gunnison (165 Fed. Rep., 873; 91 C. C. A., 457; 3 Alaska Rep., 753). Thorndyke v. Gunnison (174 Fed. Rep., 137; 3 Alaska Rep., 818). Scott v. Cook (1 Or. Rep., 107). Mitchell v. Powers (19 Pac. Rep., 647). Reynolds v. Jackson County (53 Pac. Rep., 1072). State v. Mack (25 Pac. Rep., 639). Singer Mfg. Co. v. Graham (8 Or. Rep., 17). Kimery v. Taylor (45 Pac. Rep., 771). Umatilla Irr. Co. v. Barnhart (30 Pac. Rep., 37). Cleveland Oil Co. v. Norwich Ins. Soc. (55 Pac. Rep., 435). Holcomb v. Teal (4 Or. Rep., 352). Ah Lep v. Gung Choy (11 Pac. Rep., 72). Mogan v. Thompson (9 Pac. Rep., 564). Che Gong v. Stearns (17 Pac. Rep., 871). Henrichson v. Smith (44 Pac. Rep., 496). McElvain v. Bradshaw (48 Pac. Rep., 424). Louie Chung v. Stephenson (89 Pac. Rep., 805).

NOTE.—See sec. 953, R. S., and act June 5, 1900 (31 Stat. L., 270).

Definition of new trial.

SEC. 2276. That a new trial is a reexamination of an issue of fact in the same court after a trial and decision or verdict by a court or jury.

Carter Code, sec. 167; Charlton Code, sec. 167.

State v. Eddy (82 Pac. Rep., 707).

For what causes granted.

SEC. 2277. That the former verdict or other decision may be set aside and a new trial granted, on the motion of the defendant, for any of the following causes materially affecting the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion, by which such party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the defendant, which he could not with reasonable diligence have discovered and produced at the trial.

Fifth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Sixth. Error in law occurring at the trial and excepted to by the defendant.

Carter Code, sec. 168; Charlton Code, sec. 168.

*Generally*: U. S. v. Richards & Jourden (1 Alaska Rep., 615). Russell v. Dufresne (1 Alaska Rep., 575). Moore v. Steelsmith (1 Alaska Rep., 121). Maloney v. Adsit (175 U. S. Rep., 281; 1 Alaska Rep., 743). Woods v. Beaton (1 Alaska Rep., 344). Runner v. Woitke (2 Alaska Rep., 469). Williams v. Alaska Com. Co. (2 Alaska Rep., 43). Chase v. Alaska Fish & Lbr. Co. (2 Alaska Rep., 82). Marks v. Shoup (2 Alaska Rep., 66). Johanson v. Sondheim (2 Alaska Rep., 556). Woods v. Beaton (2 Alaska Rep., 1). Alaska Com. Co. v. Dinkelspiel (126 Fed. Rep., 164; 61 C. C. A., 108; 2 Alaska Rep., 723). United States v. Owens (2 Alaska Rep., 480). Dufresne v. Nor. Light Min. Co. (2 Alaska Rep., 592). Linge's Admnr. v. Alaska Treadwell Co. (3 Alaska Rep., 9). Charlton v. Kelly (156 Fed. Rep., 433; 84 C. C. A., 295; 3 Alaska Rep., 817). Thorndyke v. Gunnison (174 Fed. Rep., 137; 98 C. C. A., 171; 3 Alaska Rep., 818). Mitchell v. Downing (32 Pac. Rep., 394). Liebe v. Nicolai (48 Pac. Rep., 172.) Henrichson v. Smith (44 Pac. Rep., 496). Alexander v. Ling (50 Pac. Rep., 915). Jennings v. Fraser (80 Pac. Rep., 1011). Adcock v. O. R. & N. Co. (77 Pac. Rep., 78). State v. Lauth (80 Pac. Rep., 660). State v. Smith (71 Pac. Rep., 973). State v. Rea (81 Pac. Rep., 82). State v. Richardson (85 Pac. Rep., 225). Ruckman v. Ormond (70 Pac. Rep., 707). Crossen v. Oliver (69 Pac. Rep., 308). Huffman v. Huffman (86 Pac. Rep., 593). Multnomah County v. Willamette Towing Co. (89 Pac. Rep., 389). State v. Blodgett (92 Pac. Rep., 820).

*Waiver of motion*: Reams v. McAlpine (2 Alaska Rep., 165). Fisk v. Henarie (13 Pac. Rep., 760). State v. Magers (58 Pac. Rep., 892).

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*Irregularities*: State *v.* Abrams (8 Pac. Rep., 327). Hemenway *v.* Francis (26 Pac. Rep., 301). State *v.* Lucas (33 Pac. Rep., 538). State *v.* Clemens (14 Pac. Rep., 410).

*Misconduct of jury*: Walton *v.* Wild Goose (123 Fed. Rep., 209; 60 C. C. A., 155; 2 Alaska Rep., 722). Gavin *v.* Anderson, No. 1339, second division (unreported). Osmun *v.* Winters (46 Pac. Rep., 780). Tucker *v.* Salem Flour Milling Co. (7 Pac. Rep., 53). State *v.* Magers (58 Pac. Rep., 892). Hough *v.* Grant's Pass Pr. Co. (65 Pac. Rep., 655).

*Accident or surprise*: Gavin *v.* Anderson, No. 1339, second division (unreported). United States *v.* Smith (1 Saw. Rep., 303). Mayes *v.* Stephens (64 Pac. Rep., 319). State *v.* Gardner (54 Pac. Rep., 809). Horn *v.* United Security Co. (81 Pac. Rep., 1009).

*Newly discovered evidence*: Gavin *v.* Anderson, No. 1339, second division (unreported). Fuller *v.* Harris (29 Fed. Rep., 814; 1 Alaska Rep., 794). Marks *v.* Shoup (2 Alaska Rep., 66). Chase *v.* Alaska Fish & Lbr. Co. (2 Alaska Rep., 82). United States *v.* Smith (1 Saw. Rep., 291). Lauder *v.* Miles (3 Or. Rep., 40). Cutler *v.* Str. Columbia (1 Or. Rep., 101). Nesley *v.* Ladd (48 Pac. Rep., 420). Belle *v.* Brown (61 Pac. Rep., 1024). State *v.* Magers (58 Pac. Rep., 892). State *v.* Hill (65 Pac. Rep., 518). Territory *v.* Latshaw (1 Or. Rep., 146). State *v.* Gardner (54 Pac. Rep., 809). State *v.* Mins (61 Pac. Rep., 888).

*Insufficiency of evidence:* McMorry *v.* Ryan (1 Alaska Rep., 516). Banks *v.* Wilson (1 Alaska Rep., 241). Carsten's Brothers *v.* Frye-Bruhn & Co. (1 Alaska Rep., 140). Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43). Barnett *v.* Freeman et al. (2 Alaska Rep., 286). Marks *v.* Shoup (2 Alaska Rep., 66). Reams *v.* McAlpine (2 Alaska Rep., 165). Or. Cascades R. Co. *v.* Or. Steam Nav. Co. (3 Or. Rep., 178). Hallock *v.* City of Portland (8 Or. Rep., 229). Series *v.* Series (57 Pac. Rep., 634). Jacobs *v.* Oran (48 Pac. Rep., 431). Merchants' Nat. Bank *v.* Pope (26 Pac. Rep., 622). Bowen *v.* States (1 Or. Rep., 271). State *v.* Fitzhugh (2 Or. Rep., 227). State *v.* Wilson (6 Or. Rep., 428). State *v.* McDonald (8 Or. Rep., 113). State *v.* Drake (4 Pac. Rep., 1204). State *v.* Becker (7 Pac. Rep. 329). State *v.* McKay (6 Pac. Rep., 624). State *v.* Roberts (13 Pac. Rep., 896). State *v.* Clemens (14 Pac. Rep., 410). State *v.* Foot You (32 Pac. Rep., 1091). State *v.* Gardner (54 Pac. Rep., 809). Ruckman *v.* Ormond (70 Pac. Rep., 707). Crossen *v.* Oliver (69 Pac. Rep., 308). McClung *v.* McPherson (81 Pac. Rep., 567). Multnomah county *v.* Willamette Towing Co. (89 Pac. Rep., 389).

*Error in law*: Williams *v.* Alaska Com. Co. (2 Alaska Rep., 43). Dufresne *v.* Nor. Lt. Mln. Co. (2 Alaska Rep., 592). State *v.* Eddy (82 Pac. Rep., 707).

NOTE.—And see cases cited under sec. 2273 of this chapter; and see also sec. 1058 of chap 22, Code of Civil Procedure, Title XIII.

Motion for new trial.

SEC. 2278. That a motion for a new trial, with the affidavits, if any, in support thereof, shall be filed within one day after the rendition of the verdict or other decision sought to be set aside. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within one day after the filing of the motion. The motion shall be heard and determined during the term, unless the court continue the same for advisement or want of time to hear it.

Carter Code, sec. 169; Charlton Code, sec 169.

Arrigoni *v.* Johnson (6 Or. Rep., 169). State *v.* Roberts (13 Pac. Rep., 896). Beekman *v.* Hamlin (31 Pac. Rep., 707).

NOTE.—And see citations under sec. 2277.

Same, when made.

SEC. 2279. That upon a trial by the court, when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision. If the next regular term of said court shall commence within less than twenty days from the time of filing such decision, then such motion shall be filed by the first day of said term. In either case the adverse party may, within four days after the filing of the motion, file counter affidavits, where the same are allowed.

Carter Code, sec. 170; Charlton Code, sec. 170.

Motion should state grounds.

SEC. 2280. That in all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subdivisions one, two, three,

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or four of section twenty-two hundred and seventy-seven of this Title, it shall be upon affidavit setting forth the facts upon which such motion is based.

Carter Code, sec. 171; Charlton Code, sec. 171.

NOTE.—And see cases under sec. 2273.

Counter affidavit when allowed.

SEC. 2281. That if the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced, or good reason shown for their nonproduction; and in the consideration of any motion for a new trial, reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

Carter Code, sec. 172; Charlton Code, sec. 172.

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## CHAPTER EIGHTEEN.

### OF ARREST OF JUDGMENT.


Sec.
2282. Motion in arrest of judgment.
2283. Effect of arrest of judgment.
2284. Defendant, when to be held.
2285. When to be discharged.


Mar. 3, 1899.
30 Stat. L., 1304.
Motion in arrest of judgment.

SEC. 2282. That a motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on either or both of the causes specified in subdivisions one and four of section twenty-one hundred and ninety-nine of this title, and not otherwise. The motion must be made within the time allowed to file a motion for a new trial, and both such motions may be made together, and heard and decided at once or separately, as the court may direct.

Carter Code, sec. 173; Charlton Code, sec. 173.

U. S. *v.* Richards & Jourden (1 Alaska Rep., 614). State *v.* Childers (49 Pac. Rep., 801). State *v.* Sally (70 Pac. Rep., 396).

Effect of arrest of judgment.

SEC. 2283. That the effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Carter Code, sec. 174; Charlton Code, sec. 174.

Defendant, when to be held.

SEC. 2284. That if, from the evidence given on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court must order the defendant to be recommitted to custody or admitted to bail, to answer the new indictment, if one be found; and if the evidence show him to be guilty of another crime than that charged in the indictment, he must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

Carter Code, sec. 175; Charlton Code, sec. 175.

When to be discharged.

SEC. 2285. That if no evidence appear sufficient to charge the defendant with any crime, he must, if in custody, be discharged, or if he has given bail or deposited money in lieu thereof, his bail is exonerated or his money must be refunded to him; and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded.

Carter Code, sec. 176; Charlton Code, sec. 176.

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# CHAPTER NINETEEN.

## OF THE JUDGMENT.

Sec.
2286. Time for pronouncing judgment.
2287. What time may be appointed.
2288. If conviction for a felony, defendant must be present; if for misdemeanor, not necessary to be present.
2289. Defendant, if in custody, must be brought before the court.
2290. Proceeding when defendant on bail and does not appear for judgment.
2291. Bench warrant to issue.
2292. Form of bench warrant.
2293. Bench warrant, how served.
2294. Court may inquire into circumstances in aggravation or mitigation of punishment.
2295. Testimony as to circumstances, how given.
2296. Defendant may be examined if he consent.
2297. No other testimony or representation to be received.
2298. On conviction of two or more crimes, judgment of imprisonment, how given.
2299. Judgment to pay fine; duration of imprisonment on.
2300. Entry of judgment of conviction.
2301. Judgment to pay fine to be docketed, and effect thereof.
2302. The name of private prosecutor to be indorsed on indictment.
2303. Judgment in case prosecution is malicious.
2304. Judgment roll, how and when made.

Mar. 3, 1899.
30 Stat. L., 1304–1307.

Time for pronouncing judgment.

SEC. 2286. That after a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment.

Carter Code, sec. 177; Charlton Code, sec. 177.

State *v.* Sally (70 Pac. Rep., 396). ¶ State *v.* Branton (87 Pac. Rep., 535).

What time may be appointed.

SEC. 2287. That the time appointed for pronouncing judgment must be at least two days after the verdict, if the court intend to remain in session so long, or if not, as remote time as can reasonably be allowed; but in no case can the judgment be given, except by the consent of the defendant, in less than six hours after the verdict.

Carter Code, sec. 178; Charlton Code, sec. 178.

If conviction for a felony, defendant must be present; if for misdemeanor, not necessary to be present.

SEC. 2288. That for the purpose of giving judgment, if the conviction be for a felony, the defendant must be personally present; but if it be for a misdemeanor, judgment may be given in his absence.

Carter Code, sec. 179; Charlton Code, sec. 179.

Kie *v.* U. S. (27 Fed. Rep., 351; 1 Alaska Rep., 726).

Defendant if in custody must be brought before the court.

SEC. 2289. That when the defendant is in custody, the court must direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

Carter Code, sec. 180; Charlton Code, sec. 180.

Proceeding when defendant on bail and does not appear for judgment.

SEC. 2290. That if the defendant has given bail or has deposited money in lieu thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Carter Code, sec. 181; Charlton Code, sec. 181.

State *v.* Williams (77 Pac. Rep., 965).

Bench warrant to issue.

SEC. 2291. That at any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, must issue such warrant, as by the order directed, whether the court be sitting or not.

Carter Code, sec. 182; Charlton Code, sec. 182.

U. S. *v.* Yakutat & Southern R. Co. (2 Alaska Rep., 628).



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Form of bench warrant.

SEC. 2292. That the bench warrant must be substantially in the following form:

"District court for the District of Alaska, Division No. .

"In the name of the United States of America.

"To the United States marshal for said district, or any deputy, greeting:

"A B having been, on the day of , hundred and , duly convicted in the court aforesaid of the crime of (designating it generally), this is to command you forthwith to arrest the above-named defendant and bring him before such court for judgment, or if the court have adjourned for the term, that you retain him in your custody. By order of the court.

"Witness my hand and seal of said district court, affixed at , this day of , hundred and .

[L. S.] "C D, Clerk."

Carter Code, sec. 183; Charlton Code, sec. 183.

Bench warrant, how served.

SEC. 2293. That such bench warrant may be served in the same manner as provided in case of a bench warrant upon an indictment.

Carter Code, sec. 184; Charlton Code, sec. 184.

Court may inquire into circumstances in aggravation or mitigation of punishment.

SEC. 2294. That after a plea or verdict of guilty, or a verdict against the defendant on a plea of former conviction or acquittal, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

Carter Code, sec. 185; Charlton Code, sec. 185.

State *v.* Cannon (2 Pac. Rep., 191).

Testimony as to circumstances, how given.

SEC. 2295. That the circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken out of court before such person authorized to take depositions, and at such time and place and upon such notice to the adverse party as the court may direct.

Carter Code, sec. 186; Charlton Code, sec. 186.

Defendant may be examined if he consent.

SEC. 2296. That if the defendant consent thereto, he may be examined as a witness in relation to such circumstances; but if he gives his testimony at his own request, then he must submit to be examined generally by the adverse party.

Carter Code, sec. 187; Charlton Code, sec. 187.

No other testimony or representation to be received.

SEC. 2297. That no affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court in aggravation or mitigation of the punishment, except as provided in the last three sections; and a violation of this section may be punished as a contempt.

Carter Code, sec. 188; Charlton Code, sec. 188.

On conviction of two or more crimes, judgment of imprisonment, how given.

SEC. 2298. That if the defendant is convicted of two or more crimes, before judgment on either, the judgment must be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of such crimes; and if the defendant be in imprisonment upon a previous judgment on a conviction for a crime, the judgment must be that the imprisonment must commence at the expiration of the term limited by such previous judgment.

Carter Code, sec. 189; Charlton Code, sec. 189.

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Judgment to pay fine; duration of imprisonment on.

SEC. 2299. That a judgment that the defendant pay a fine must also direct that he be imprisoned in the county jail until the fine be satisfied, specifying the extent of the imprisonment, which can not exceed one day for every two dollars of the fine; and in case the entry of judgment should omit to direct the imprisonment and the extent thereof, the judgment to pay the fine shall operate to authorize and require the imprisonment of the defendant until the fine is satisfied at the rate above mentioned.

Carter Code, sec. 190; Charlton Code, sec. 190.

State *v.* Sheppard (16 Pac. Rep., 483).
Ex parte McGee (54 Pac. Rep., 1091).
Booth *v.* United States (197 Fed. Rep., 283).

Entry of judgment of conviction.

SEC. 2300. That when judgment upon a conviction is given, the clerk must enter the same in the journal, stating briefly the crime for which the conviction has been had. Such entry may be made at any time during the term, as of the day's proceedings upon which the judgment was given.

Carter Code, sec. 191; Charlton Code, sec. 191.

Judgment to pay fine to be docketed, and effect thereof.

SEC. 2301. That a judgment that the defendant pay money either as a fine or as costs and disbursements of the action, or both, must be docketed as a judgment in a civil action and may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: *Provided*, That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of an execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid.

*Proviso.* Directing imprisonment until fine paid.

Carter Code, sec. 192; Charlton Code, sec. 192.

Whitley *v.* Murphey (5 Or. Rep., 332).
State *v.* Munds (7 Or. Rep., 81).

The name of private prosecutor to be indorsed on indictment.

SEC. 2302. That the name of every person who voluntarily appears before any commissioner, magistrate, or grand jury to prosecute any person in a criminal action, either for a misdemeanor or felony, shall be indorsed upon the complaint, information, or indictment as a private prosecutor; and if it be found by any commissioner, magistrate, or court trying said action or hearing said proceeding that the prosecution is malicious or without probable cause, said facts shall be entered upon record in said action or proceeding by said commissioner, magistrate, or court.

Carter Code, sec. 193; Charlton Code, sec. 193.

Judgment in case prosecution is malicious.

SEC. 2303. That upon making the entry prescribed in the last preceding section, the commissioner, magistrate, or court must immediately render judgment against the private prosecutor for the costs and disbursements of the action or proceeding, which may be enforced by execution in the same manner as a judgment in a civil action.

Carter Code, sec. 194; Charlton Code, sec. 194.

Judgment roll, how and when made.

SEC. 2304. That immediately after the entry of judgment the clerk must prepare and annex together the following papers, which constitute the judgment roll:

First. The indictment and demurrer, if there be one.

Second. A copy of the journal entry of the plea, the trial, and verdict, and of any order involving the merits and necessarily affecting the judgment.

Third. A copy of the journal entry of the judgment.

Fourth. The bill of exceptions, if there be one.

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And in all cases the clerk must attach upon the outside of the judgment roll a blank sheet of paper, upon which he shall indorse the name of the court, the term at which judgment was given, and the names of the parties to the action and the title thereof, for whom judgment was given, and the amount and nature thereof, and the date of its entry and docketing.

Carter Code, sec. 195; Charlton Code, sec. 195.

Ball *v.* U. S. (147 Fed. Rep., 32; 78 C. C. A., 126; 3 Alaska Rep., 731).
State *v.* Rhinehart (38 Pac. Rep., 822).
State *v.* Abrams (8 Pac. Rep., 327).

## CHAPTER TWENTY.

### OF THE EXECUTION.


Sec.
2305. Authority for the execution of judgment, except of death.
2306. Judgment of imprisonment or for a fine, how executed.
2307. Warrant to enforce judgment of death.
2308. Death sentence, how and where executed.
2309. Judgment for money in criminal action, how enforced.
2310. Return of marshal or officer executing judgment.


Mar. 3, 1899.
30 Stat. L., 1307.
Authority for the execution of judgment, except of death.

SEC. 2305. That when a judgment, except of death, has been pronounced a certified copy of the entry thereof upon the journal must be forthwith furnished by the clerk to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

Carter Code, sec. 196; Charlton Code, sec. 196.

Judgment of imprisonment or for a fine, how executed.

SEC. 2306. That when the judgment is imprisonment in the penitentiary the marshal shall deliver the body of the defendant, together with a copy of the entry of judgment, to the keeper of such prison; and when the judgment is imprisonment in the county jail, or a fine and that the defendant be imprisoned until it be paid, the judgment must be executed by the marshal.

Carter Code, sec. 197; Charlton Code, sec. 197.

Warrant to enforce judgment of death.

SEC. 2307. That when judgment of death is pronounced a warrant, signed by the judge of the court and attested by the clerk, with the seal of the court affixed, must be drawn and delivered to the United States marshal. The warrant shall state the conviction and judgment and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment.

Carter Code, sec. 198; Charlton Code, sec. 198.

State *v.* Marple (14 Pac. Rep., 521).

Death sentence, how and where executed.

SEC. 2308. That the punishment of death must be inflicted by hanging the defendant by the neck until he be dead, and the judgment must be executed by the United States marshal or his deputy; and all executions shall take place in the presence of twelve bona fide inhabitants of the District, to be selected by the marshal; and the fact of the faithful performance of the marshal or his deputy in carrying out the sentence of the court shall be certified by the said twelve inhabitants, and filed in the office of the clerk of the court.

Carter Code, sec. 199; Charlton Code, sec. 199.

Judgment for money in criminal action, how enforced.

SEC. 2309. That a judgment in a criminal action, so far as it requires the payment of money, whether the same be a fine or costs and

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disbursements of the action, or both, in addition to the means in this chapter provided, may be enforced as a judgment in a civil action.

Carter Code, sec. 200; Charlton Code, sec. 200.

Return of marshal or officer executing judgment.

SEC. 2310. That when a judgment in a criminal action has been executed, the marshal or officer executing it must return to the clerk the warrant or copy of the entry of judgment upon which he acted, with a statement of his doings indorsed thereon, and the clerk must file the same and annex it to the judgment roll in the case.

Carter Code, sec. 201; Charlton Code, sec. 201.

## CHAPTER TWENTY-ONE.

### OF APPEALS AND WRITS OF ERROR.

Sec.
2311. Appeals and writs of error, how taken.

Mar. 3, 1899.
30 Stat. L., 1307.
Appeals and writs of error, how taken.

SEC. 2311. That appeals and writs of error in criminal actions may be taken and prosecuted from the decisions and judgments of the district court for the District of Alaska to the Supreme Court of the United States, or to the circuit court of appeals for the ninth circuit, in the same manner and under the same regulations as from the circuit and district courts of the United States, under the acts of Congress now in force or that may be hereafter enacted.

Carter Code, sec. 202; Charlton Code, sec. 202.

U. S. *v.* Hewecker (164 U. S. Rep., 46). U. S. *v.* Sanges (144 U. S. Rep., 310). Goodshot *v.* U. S. (104 Fed Rep., 257). Fitzpatrick *v.* U. S. (178 U. S. Rep., 304). Davis *v.* U. S. (107 Fed. Rep., 753). Ballew *v.* U. S. (160 U. S. Rep., 187). Ansbro *v.* U. S. (159 U. S. Rep., 695). Stokes *v.* U. S. (60 Fed. Rep., 597). U. S. *v.* Sutton (47 Fed. Rep., 129). O'Neal *v.* U. S. (190 U. S. Rep., 36). Hunt *v.* U. S. (166 U. S. Rep., 424) Folsom *v.* U. S. (160 U. S. Rep., 121).

NOTE.—See 23 Stat. L., p. 24, sec. 7, and 26 Stat. L., p. 826, secs. 4 to 7 inclusive.

## CHAPTER TWENTY-TWO.

### OF BAIL.

Sec.
2312. Admission to bail defined.
2313. Taking bail defined.
2314. When defendant can not be admitted to bail.
2315. When defendant admitted to bail before conviction, as a matter of right.
2316. When defendant may be admitted to bail after conviction and during examination.
2317. Who may admit to bail.
2318. When only admitted to bail by court or judge where action is pending.
2319. Order for admission to bail, how made.
2320. Application when denied can not be made to another magistrate.
2321. Admission to bail in such cases may be revoked or vacated.
2322. When defendant may appeal from decision denying application.
2323. Manner of taking such appeal.
2324. Decision of court on appeal final.
2325. Bail, how put in and form of undertaking.
2326. Undertaking, how executed.
2327. Qualifications of bail.
2328. Bail must justify.
2329. Bail must be examined as to sufficiency.
2330. Other testimony may be received as to the sufficiency of bail.
2331. Decision upon a sufficiency of bail, and filing the papers.
2332. Discharge of defendant on allowance of bail.
2333. Form of bail on appeal.
2334. Proceeding when bail disallowed.
2335. Application to take bail or be admitted to bail, district attorney may appear.
2336. When court or magistrate may require notice of application to be given to district attorney.
2337. Bail may be taken with or without notice to the district attorney.

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Mar. 3, 1899. 30 Stat. L., 1308–1310.

Admission to bail defined.

SEC. 2312. That admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Carter Code, sec. 203; Charlton Code, sec. 203.
U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 459).

Taking bail defined.

SEC. 2313. That the taking of bail consists in the acceptance by a competent court or magistrate of the undertaking of sufficient bail for the appearance of defendant, according to the terms of the undertaking, or that the bail will pay to the United States a specified sum of money.

Carter Code, sec. 204; Charlton Code, sec. 204.

Whitney *v.* Darrow (5 Or. Rep. 444). State *v.* Hayes (2 Or. Rep., 314). State *v.* Crane (13 Pac. Rep., 773). Colvig *v.* Klamath County (19 Pac. Rep., 86). Hyde *v.* Cross (37 Pac. Rep., 59). Hannah *v.* Wells (4 Or. Rep., 249). Metschan *v.* Grant County (58 Pac. Rep., 80).

When defendant can not be admitted to bail.

SEC. 2314. That the defendant can not be admitted to bail when the proof or presumption of his guilt is evident or strong, and when he is charged with the crime of murder in the first degree or with treason or with rape.

Carter Code, sec. 205; Charlton Code, sec. 205.*

When defendant admitted to bail before conviction, as a matter of right.

SEC. 2315. That if the charge be for any other crime than those mentioned in the last section, the defendant, before conviction, is entitled to be admitted to bail, as a matter of right.

Carter Code, sec. 206; Charlton Code, sec. 206.

When defendant may be admitted to bail after conviction and during examination.

SEC. 2316. That after judgment of conviction of a crime other than those mentioned in section twenty-three hundred and fourteen of this title, a defendant who has appealed, and when there is a stay of proceedings and not otherwise, may be admitted to bail as a matter of right; and as a matter of discretion, a defendant may be admitted to bail for his appearance from day to day before the magistrate, on the examination of the charge, before being held to answer, or discharged.

Carter Code, sec. 207; Charlton Code, sec. 207.

Who may admit to bail.

SEC. 2317. That a magistrate authorized to issue a warrant of arrest, as provided in sections twenty-three hundred and eighty and twenty-three hundred and eighty-one of this title, is a magistrate authorized, within his jurisdiction, to admit to bail and to take bail, except as in this chapter otherwise provided.

Carter Code, sec. 208; Charlton Code, sec. 208.

When only admitted to bail by court or judge where action is pending.

SEC. 2318. That after an indictment is found, and upon an appeal, a defendant can not be admitted to bail except by the court, or judge thereof, where the action is pending or in which the judgment appealed from is given.

Carter Code, sec. 209; Charlton Code, sec. 209.
U. S. *v.* Dunbar (83 Fed. Rep., 151).

Order for admission to bail, how made.

SEC. 2319. That if an application to be admitted to bail be made to a court, an order must be made granting or denying it; and if it be granted, stating the sum in which bail may be taken; but if the application be made to a magistrate, he must certify, in writing, his decision granting or denying the same, and, if he grant it, stating the sum in which bail may be taken.

Carter Code, sec. 210; Charlton Code, sec. 210.

Application when denied can not be made to another magistrate.

SEC. 2320. That if an application for admission to bail be denied, no subsequent application therefor can be made to another magistrate; and a violation of this section may be punished as a contempt.

Carter Code, sec. 211; Charlton Code, sec. 211.

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Admission to bail in such cases may be revoked or vacated.

SEC. 2321. That the admission to bail contrary to the last section may be revoked by the magistrate who made it, or vacated by the court, or judge thereof, in which the defendant is triable for the crime charged.

Carter Code, sec. 212; Charlton Code, sec. 212.

When defendant may appeal from decision denying application.

SEC. 2322. That if the application for admission to bail, when made to a magistrate, be denied, the defendant may appeal from the decision to the court or judge thereof in which the defendant is triable for the crime charged.

Carter Code, sec. 213; Charlton Code, sec. 213.

Manner of taking such appeal.

SEC. 2323. That such appeal is taken by a notice to the district attorney that the defendant appeals from the decision of the magistrate, and that he will apply to the court or judge thereof (naming it or him) to be admitted to bail at a time and place therein specified, the former not less than three days from the service of such notice.

Carter Code, sec. 214; Charlton Code, sec. 214.

Decision of court on appeal final.

SEC. 2324. That the decision of the court, or judge thereof, granting or denying bail, either upon an original application or upon an appeal, is final.

Carter Code, sec. 215; Charlton Code, sec. 215.

Bail, how put in and form of undertaking.

SEC. 2325. That bail is put in by a written undertaking, executed by two sufficient sureties, and acknowledged before the court or magistrate taking the same. It may be substantially in the following form:

First. Before indictment:

"An order having been made on the day of , hundred and , by A B (adding his official title and place of jurisdiction), that C D be held to answer upon a charge of (stating briefly the nature of the crime), upon which he has been duly admitted to bail in the sum of dollars,

"We, E F, of (stating his place of residence and occupation), and G H, of (stating his place of residence and occupation), hereby undertake that the above-named C D shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof, or if he fail to perform either of those conditions that we will pay to the United States the sum of dollars" (inserting the sum in which the defendant is admitted to bail).

Second. After indictment and before judgment:

"An indictment having been found on the day of , hundred and , in the district court for the District of Alaska, division No. , charging A B with the crime of (designating it generally), and he having been duly admitted to bail in the sum of dollars" (the remainder of the undertaking may be in the words of the form numbered one, substituting the word "indictment" for the word "charge").

Third. Upon an appeal:

"A judgment having been given on the day of , whereby A B was condemned to (setting forth the terms of the judgment generally), and he having appealed from said judgment and been duly admitted to bail in the sum of dollars,

"We, C D, of (stating his place of residence and occupation), and E F, of (stating his place of residence and occupation), hereby undertake that the above-named A B shall in all respects abide and per-

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form the orders and judgments of the appellate court upon the appeal, or if he fail to do so in any particular, that we will pay to the United States the sum of dollars" (inserting the sum in which the defendant is admitted to bail).

Carter Code, sec. 216; Charlton Code, sec. 216.

U. S. *v.* Florence (1 Alaska Rep., 679). U. S. *v.* Sheep Creek John (1 Alaska Rep., 682). Belt *v.* Spaulding (20 Pac. Rep., 827). U. S. *v.* Dunbar (83 Fed. Rep., 151). State *v.* Gardner (45 Pac. Rep., 753). Malheur County *v.* Carter (98 Pac. Rep., 489).

Undertaking, how executed.

SEC. 2326. That the undertaking must be dated and signed by the sureties in the presence of the magistrate taking the bail, and he must append thereto a certificate signed by him, with his name of office, and substantially in the following form: "Taken and acknowledged before me the day and year above written."

Carter Code, sec. 217; Charlton Code, sec. 217.

Qualifications of bail.

SEC. 2327. That the qualifications of bail are as follows:

First. Each of them must be a resident within the district; but no counselor or attorney, marshal, clerk of any court, or other officer of any court is qualified to be bail.

Second. They must each be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities; but the court or magistrate, on taking the bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail.

Carter Code, sec. 218; Charlton Code, sec. 218.

Paxton *v.* Liveley (85 Pac. Rep., 501).

Bail must justify.

SEC. 2328. That the bail must in all cases justify by affidavit; and the affidavit must state that they each possess the qualifications prescribed by the last preceding section.

Carter Code, sec. 219; Charlton Code, sec. 219.

Bail must be examined as to sufficiency.

SEC. 2329. That the district attorney or the court or magistrate may, before the bail is taken, further examine them, upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper. The statements of the bail in response to the examination must be reduced to writing, and subscribed by them.

Carter Code, sec. 220; Charlton Code, sec. 220.

Other testimony may be received as to the sufficiency of bail.

SEC. 2330. That the court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of proving or disproving their sufficiency.

Carter Code, sec. 221; Charlton Code, sec. 221.

Decision upon a sufficiency of bail, and filing the papers.

SEC. 2331. That when the examination is closed, the court or magistrate must indorse upon the undertaking an order either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits and examination of the sureties and the order of admission to bail, to be filed with the clerk of the court at which the defendant is bound to appear, or where the action is pending, or the judgment appealed from is given, as the case may be.

Carter Code, sec. 222; Charlton Code, sec. 222.

Belt *v.* Spaulding (20 Pac. Rep., 827).

Discharge of defendant on allowance of bail.

SEC. 2332. That upon the execution of the undertaking and the allowance of the bail, the court or magistrate must make an order, signed with his name of office, for the discharge of the defendant, to the following effect:

"To the United States marshal, District of Alaska:

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"A B, who is detained by you to answer a [charge or indictment, as the case may be] for the crime of [designating it generally], having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody."

Carter Code, sec. 223; Charlton Code, sec. 223.

Form of bail on appeal.

SEC. 2333. That if the bail be taken upon an appeal from a judgment, the order must be to the effect following:

"To the United States marshal, District of Alaska:

"A B, who is detained by you in execution of a judgment whereby he is condemned to [stating the terms of the judgment generally], having appealed from said judgment and given sufficient bail to abide and perform the judgment of the appellee court, you are commanded forthwith to discharge him from your custody."

Carter Code, sec. 224; Charlton Code, sec. 224.

Proceeding when bail disallowed.

SEC. 2334. That if the bail be disallowed, the defendant must be detained in custody until other bail be put in and is allowed.

Carter Code, sec. 225; Charlton Code, sec. 225.

Application to take bail or be admitted to bail, district attorney may appear.

SEC. 2335. That upon an application for admission to bail or to take bail, the district attorney, either in person or by anyone authorized by him, is entitled to appear and be heard in relation thereto.

Carter Code, sec. 226; Charlton Code, sec. 226.

When court or magistrate may require notice of application to be given to district attorney.

SEC. 2336. That when the admission to bail is a matter of discretion, or the right thereto may be doubtful, the court or magistrate by whom it may be ordered may require such notice of the application therefor as he deems reasonable to be given to the district attorney, or to any person by him authorized to appear for him.

Carter Code, sec. 227; Charlton Code, sec. 227.

Bail may be taken with or without notice to the district attorney.

SEC. 2337. That bail may be taken, in the discretion of the court or magistrate, without notice to the district attorney, or he may require reasonable notice for the application therefor, as in case of an application to bail.

Carter Code, sec. 228; Charlton Code, sec. 228.

## CHAPTER TWENTY-THREE.

### OF DEPOSIT INSTEAD OF BAIL.


Sec.
2338. Deposit in lieu of bail, when and how made.
2339. May be made after bail given and before forfeiture.
2340. Bail may be given after deposit.
2341. Deposit to be applied in payment of judgment for fine.


Mar. 3, 1899.

30 Stat. L., 1311.

Deposit in lieu of bail, when and how made.

SEC. 2338. That the defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court at which he is held to answer, or in which the action is pending or the judgment appealed from is given, the sum of money mentioned in the order; and upon delivering to the officer in whose custody he is the clerk's certificate of such deposit he must be discharged from custody.

Carter Code, sec. 229; Charlton Code, sec. 229.
State *v.* Williams (77 Pac. Rep., 965).

May be made after bail given and before forfeiture.

SEC. 2339. That if the defendant have given bail, he may, at any time before the forfeiture of their undertaking of it, in like manner deposit the sum of money mentioned in the undertaking; and upon

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the deposit being made and the certificate thereof given, the bail is exonerated.

Carter Code, sec. 230; Charlton Code, sec. 230.

Bail may be given after deposit.

SEC. 2340. That if money be deposited, as provided in the last two sections, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit, and the court or magistrate before whom the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant; and it must be refunded accordingly.

Carter Code, sec. 231; Charlton Code, sec. 231.

Deposit to be applied in payment of judgment for fine.

SEC. 2341. That when any money has been deposited in lieu of bail, if it remain on deposit at the time of a judgment for the payment of money, the clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the same must refund the surplus, if any, to the defendant.

Carter Code, sec. 232; Charlton Code, sec. 232.

## CHAPTER TWENTY-FOUR.

### OF THE SURRENDER OF THE DEFENDANT.


Sec.
2342. Surrender, by whom, when, and how made.
2343. Bail may arrest defendant for the purpose of surrender.
2344. On surrender, if money deposited, must be refunded.
2345. Notice to the district attorney to obtain order for deposit.


Mar. 3, 1899.
30 Stat. L., 1311–1312.
Surrender, by whom, when, and how made.

SEC. 2342. That at any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail in the following manner:

First. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate signed with his name of office acknowledge the surrender.

Second. At any time after the surrender of the defendant, either by his bail or himself, the court or judge thereof at which the defendant is bound to appear, or where the action is pending or the judgment appealed from is given, as the case may be, may, upon reasonable notice to the district attorney, order that the bail be exonerated, and upon the entry or filing of such order they are exonerated accordingly.

Carter Code, sec. 233; Charlton Code, sec. 233.

Bail may arrest defendant for the purpose of surrender.

SEC. 2343. That for the purpose of surrendering the defendant, the bail, at any time before the forfeiture of their undertaking and at any place within the district, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any other person to do so.

Carter Code, sec. 234; Charlton Code, sec. 234.

On surrender, if money deposited, must be refunded.

SEC. 2344. That if money have been deposited in lieu of bail and the defendant, at any time before the forfeiture thereof, surrender himself to the officer to whose custody he was committed at the time of making the deposit, in the manner provided in section twenty-three hundred and forty-two, of this title the court or judge thereof must

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order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon reasonable notice of the application to the district attorney.

Carter Code, sec. 235; Charlton Code, sec. 235.

Notice to the district attorney to obtain order for deposit.

SEC. 2345. That the notice to be given to the district attorney, as required in this chapter, may be given to him personally or to any person authorized to appear for him, as provided in sections twenty-three hundred and thirty-five and twenty-three hundred and thirty-six of this title.

Carter Code, sec. 236; Charlton Code, sec. 236.

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# CHAPTER TWENTY-FIVE.

## OF THE FORFEITURE OF THE UNDERTAKING OF BAIL OR THE DEPOSIT MONEY.


Sec.
2346. Undertaking, when forfeited, and how ordered.
2347. When and how forfeiture may be discharged.
2348. Forfeiture to be enforced by action.
2349. Remission of forfeiture.
2350. Conditions of remission.
2351. Applications therefor, how made, judgment on final.
2352. Deposit of money, how disposed of when forfeited.


Mar. 3, 1899.
30 Stat. L., 1312.
Undertaking, when forfeited and how ordered.

SEC. 2346. That if, without sufficient excuse, the defendant neglect or fail to appear for arraignment, or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered in its journal; and the undertaking of bail or the money deposited in lieu thereof, as the case may be, is thereupon forfeited.

Carter Code, sec. 237; Charlton Code, sec. 237.

U. S. *v.* Manthei's Bondsmen (2 Alaska Rep., 463–464).

Clifford *v.* Marston (13 Pac. Rep., 62).

NOTE.—See also cases cited under sec. 2325, chap. 22, of this title, ante.

When and how forfeiture may be discharged.

SEC. 2347. That if, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect or failure, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just.

Carter Code, sec. 238; Charlton Code, sec. 238.

Forfeiture to be enforced by action.

SEC. 2348. That if the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed, by action only, against the bail upon their undertaking.

Carter Code, sec. 239; Charlton Code, sec. 239.

Wollenberg *v.* Sykes (89 Pac. Rep., 148).

Remission of forfeiture.

SEC. 2349. That at any time before judgment against the bail, in an action upon the undertaking, they may apply to the court for a remission of the forfeiture, and thereupon the court, upon good cause shown, may remit the forfeiture or any part thereof, upon such terms as may be just and reasonable, according to the circumstances of the case.

Carter Code, sec. 240; Charlton Code, sec. 240.

Conditions of remission.

SEC. 2350. That the court can only remit the forfeiture, in whole or in part, upon the payment of the costs and expenses incurred in the proceedings for its enforcement; and if part only be remitted, judgment must be given against the bail for the remainder, and such

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judgment is a bar to an action upon the undertaking, or if one be already commenced, it is thereby abated.

Carter Code, sec. 241; Charlton Code, sec. 241.

Applications therefor, how made; judgment on final.

SEC. 2351. That the application for remission must be upon at least ten days' notice to the district attorney, with copies of all affidavits and papers on which it is founded. The application must admit the forfeiture and their legal obligation to pay the sum mentioned in the undertaking, and the judgment or order of the court in the matter is final.

Carter Code, sec. 242; Charlton Code, sec. 242.

Deposit of money, how disposed of when forfeited.

SEC. 2352. That if money deposited in lieu of bail is forfeited and the forfeiture be not discharged, as provided in section twenty-three hundred and forty-seven, of this title the clerk with whom it is deposited must, after the final adjournment of the court, forthwith deposit the same in the same manner as in the case of moneys collected upon judgments in favor of the United States.

Carter Code, sec. 243; Charlton Code, sec. 243

## CHAPTER TWENTY-SIX.

### OF RECOMMITMENT OF THE DEFENDANT AFTER BAIL OR A DEPOSIT OF MONEY IN LIEU THEREOF.


Sec.
2353. When defendant may be recommitted.
2354. Contents of the order for the arrest.
2355. Defendant arrested on copy of order, how served.
2356. If for failure to appear for judgment, defendant must be committed.
2357. If for other cause he may be admitted to bail.
2358. Bail in such case, by whom taken.
2359. Form of the undertaking.
2360. Qualifications of bail, and how put in.


Mar. 3, 1899.
30 Stat. L., 1313.
When defendant may be recommitted.

SEC. 2353. That the court at which the defendant is bound to appear, or where the action is pending, or the judgment appealed from is given, may, by an order entered upon its journal, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

First. When, by reason of his neglect or failure to appear, he has incurred a forfeiture of his bail, or of money deposited in lieu thereof, as provided in section twenty-three hundred and forty-six of this title;

Second. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the district;

Third. Upon an indictment being found in the cases provided for in section twenty-one hundred and eighty-nine of this title.

Carter Code, sec. 244; Charlton Code, sec. 244.

Contents of the order for the arrest.

SEC. 2354. That the order for the recommitment of the defendant must recite, generally, the facts upon which it is founded, and direct that the defendant be arrested by the United States marshal or any deputy, to be detained until legally discharged.

Carter Code, sec. 245; Charlton Code, sec. 245.

Defendant arrested on copy of order, how served.

SEC. 2355. That the defendant may be arrested pursuant to the order, upon a certified copy thereof, in the same manner as upon a bench warrant.

Carter Code, 246; Charlton Code, sec. 246.

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If for failure to appear for judgment, defendant must be committed.

SEC. 2356. That if the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Carter Code, sec. 247; Charlton Code, sec. 247.

If for other cause, he may be admitted to bail.

SEC. 2357. That if the order be made for any other cause than that specified in the last section, and the crime be bailable, the court may direct in the order that the defendant be admitted to bail, in an amount to be therein specified.

Carter Code, sec. 248; Charlton Code, sec. 248.

Bail in such case, by whom taken.

SEC. 2358. That when the defendant is admitted to bail the bail may be taken by any magistrate having authority to take bail, as provided in section twenty-three hundred and seventeen of this title, or by any particular magistrate, to be designated by the order.

Carter Code, sec. 249; Charlton Code, sec. 249.

Form of the undertaking.

SEC. 2359. That when bail is taken upon an order for the recommitment of the defendant, the undertaking of bail must be in substantially the form prescribed in section twenty-three hundred and twenty-five of this title for the original undertaking of bail, except that it need not refer to the original order of admission to bail and must specify the court in which the order for recommitment and admission to bail is made and the date of such order.

Carter Code, sec. 250; Charlton Code, sec. 250.

Qualifications of bail and how put in.

SEC. 2360. That the bail must possess the qualifications and must be put in in all respects in the manner prescribed by chapter twenty-two of this act.

Carter Code, sec. 251; Charlton Code, sec. 251.

## CHAPTER TWENTY-SEVEN.

### OF COMPELLING THE ATTENDANCE OF WITNESSES.

Sec.
2361. Subpœnas, and so forth, how regulated.

Mar. 3, 1899.
30 Stat. L., 1314.
Subpœnas, etc., how regulated.

SEC. 2361. That the issuance of subpœnas and all proceedings to compel the attendance of witnesses in criminal actions in the said District shall be regulated by the laws of the United States respecting district and circuit courts.

Carter Code, sec. 252; Charlton Code, sec. 252.

Sec. 858, 7 F. S. A., 1116; secs. 859 to 875, 3 F. S. A., 5; secs. 876 to 881, 7 F. S. A., 1121; secs. 882 to 907, 3 F. S. A., 26; sec. 908, 7 F. S. A., 138; sec. 909, 3 F. S. A., 95; sec. 910, 5 F. S. A., 35.

## CHAPTER TWENTY-EIGHT.

### OF COMPROMISING CERTAIN CRIMES BY LEAVE OF THE COURT.

Sec.
2362. What crimes may be compromised.
2363. Compromise by permission of the court; order thereon.
2364. Order a bar to another prosecution.
2365. No crime can be compromised, except.

Mar. 3, 1899.
30 Stat. L., 1314.
What crimes may be compromised.

SEC. 2362. That when a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting

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the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed—

First. By or upon an officer *of justice while in the execution of the duties of his office;

Second. Riotously; or

Third. With an intent to commit a felony, or

Fourth. Larcenously.

Carter Code, sec. 253; Charlton Code, sec. 253.

* NOTE.—"Of" ought to be "or."

Compromise by permission of the court; order thereon.

SEC. 2363. That if the party injured appear before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and the reasons therefor must be entered on the journal.

Carter Code, sec. 254; Charlton Code, sec. 254.

Saxon *v.* Conger (6 Or. Rep., 389). | Noble *v.* United States (190 Fed. Rep., 538).

Order a bar to another prosecution.

SEC. 2364. That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Carter Code, sec. 255; Charlton Code, sec. 255.

No crime can be compromised, except.

SEC. 2365. That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Carter Code, sec. 256; Charlton Code, sec. 256

## CHAPTER TWENTY-NINE.

### OF DISMISSAL OF THE ACTION FOR WANT OF PROSECUTION OR OTHERWISE.


Sec.
2366. Dismissal of charge when indictment not found at next term.
2367. Dismissal of action when not brought to trial at next term after indictment found.
2368. Court may continue cause and admit defendant to bail on his own undertaking.
2369. Effect of dismissal of action or charge upon bail or deposit.
2370. When court may dismiss action on its own motion or that of the district attorney.
2371. Nolle prosequi abolished.
2372. Dismissal, when a bar to another action.


Mar. 3, 1899.

30 Stat. L., 1314–1315.

Dismissal of charge when indictment not found at next term.

SEC. 2366. That when a person has been held to answer for a crime, if an indictment be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Carter Code, sec. 257; Charlton Code, sec. 257.

Dismissal of action when not brought to trial at next term after indictment found.

SEC. 2367. That if a defendant, indicted for a crime, whose trial has not been postponed upon his application or by his consent, be not brought to trial at the next term of the court in which the indictment is triable after it is found, the court must order the indicment to be dismissed, unless good cause to the contrary be shown.

Carter Code, sec. 258; Charlton Code, sec. 258.

State *v.* Breaw (78 Pac. Rep., 896).

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Court may continue cause and admit defendant to bail on his own undertaking.

SEC. 2368. That if the defendant be not indicted or tried as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking of bail, for his appearance to answer the charge or action at the time to which the same is continued.

Carter Code, sec. 259; Charlton Code, sec. 259.

Effect of dismissal of action or charge upon bail or deposit.

SEC. 2369. That if the court direct the charge or action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited in lieu thereof must be refunded to him.

Carter Code, sec. 260; Charlton Code, sec. 260.

When court may dismiss action on its own motion or that of the district attorney.

SEC. 2370. That the court may, either on its own motion or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered in the journal.

Carter Code, sec. 261; Charlton Code, sec. 261.
State *v.* Reinhart (38 Pac. Rep., 822).

Nolle prosequi abolished.

SEC. 2371. That the entry of a nolle prosequi is abolished; and the district attorney can not discontinue or abandon a prosecution for a crime, except as provided in the last section.

Carter Code, sec. 262; Charlton Code, sec. 262.

Dismissal, when a bar to another action.

SEC. 2372. That an order for the dismissal of a charge or action, as provided in this chapter, is a bar to another prosecution for the same crime, if it be a misdemeanor, but it is not a bar if the crime charged be a felony.

Carter Code, sec. 263; Charlton Code, sec. 263.
State *v.* Reinhart (38 Pac. Rep., 822).

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# CHAPTER THIRTY.

## OF THE DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.


Sec.
2373. How officer to hold property alleged to have been stolen or embezzled.
2374. Order for delivery to the owner by magistrate.
2375. Order by court where trial is had.
2376. Effect of order of delivery of property.
2377. Receipt for money or property taken from person when arrested.
2378. Sale and disposition of property when not claimed.


Mar. 3, 1899.
30 Stat. L., 1315.
How officer to hold property alleged to have been stolen or embezzled.

SEC. 2373. That when property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold it subject to the order of the magistrate or court, as provided in this chapter.

Carter Code, sec. 264; Charlton Code, sec. 264.
NOTE.—See sec. 2487, chap 38, post.

Order for delivery to the owner by magistrate.

SEC. 2374. That on satisfactory proof of title of the owner of the property, the magistrate who examines the charge against the person accused of the crime must order it to be delivered to the owner, or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be ascertained and certified by the magistrate.

Carter Code, sec. 265; Charlton Code, sec. 265.

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Order by court where trial is had.

SEC. 2375. That if property stolen or embezzled has not been delivered to the owner, the court before which the trial is had for the stealing or embezzling may, on like proof and condition, order its delivery to the owner or his agent.

Carter Code, sec. 266; Charlton Code, sec. 266.

Effect of order of delivery of property.

SEC. 2376. That the order provided for in the last two sections entitles the owner or his agent to demand and receive the possession of the property from the officer having it in custody, and authorizes such officer to deliver it accordingly, but does not affect the rights of third persons.

Carter Code, sec. 267; Charlton Code, sec. 267.

Receipt for money or property taken from person when arrested.

SEC. 2377. That when money or other property is taken from a person arrested upon a charge of crime, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or kind of property taken, one of which receipts he must then deliver to the person arrested and the other to the magistrate who examines the charge; or if the arrest be after indictment found, to the clerk of the court where the action is pending.

Carter Code, sec. 268; Charlton Code, sec. 268.

Sale and disposition of property when not claimed.

SEC. 2378. That if property stolen or embezzled be not claimed by the owner before the expiration of sixty days from the conviction of the person for stealing or embezzling it, the officer having it in custody must, if it be money, pay it to the clerk of the court, or if it be other property, must sell it as upon an execution, and after paying the expenses of the sale and preservation of the property, to be ascertained and certified by the clerk of the court, pay the proceeds to the clerk of the court, to be deposited by him as in the case of moneys collected upon judgments in favor of the United States.

Carter Code, sec. 269; Charlton Code, sec. 269.

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# CHAPTER THIRTY-ONE.

## OF THE INFORMATION AND BY WHOM TAKEN.


Sec.
2379. Information defined.
2380. Magistrate defined.
2381. Who are magistrates.


Mar. 3, 1899.
30 Stat. L., 1316.
Information defined.

SEC. 2379. That an information is the allegation or statement made before a magistrate, and verified by the oath of the party making it, that a person has been guilty of some designated crime.

Carter Code, sec. 270; Charlton Code, sec. 270.

U. S. *v.* Waller (1 Saw. Rep., 701; 1 Alaska Rep., 755). U. S. *v.* Powers & Robertson (1 Alaska Rep., 180). Ex parte Dubuque (1 Alaska Rep., 19). U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 599). State *v.* Guglielmo (79 Pac. Rep., 577). Booth *v.* United States (197 Fed. Rep., 283).

Magistrate defined.

SEC. 2380. That a magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime.

Carter Code, sec. 271; Charlton Code, sec. 271.

Wallowa County *v.* Oakes (78 Pac. Rep., 892).

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Who are magistrates.

SEC. 2381. That the following persons are magistrates:

First. The judge of the district court.

Second. The commissioners authorized by act of Congress to exercise the powers and duties of justices of the peace.

Carter Code, sec. 272; Charlton Code, sec. 272.

Nixon *v.* U. S. (82 Fed. Rep., 23). | Rep., 892). See R. S., 1014, and 2 F.
Wallowa County *v.* Oakes (78 Pac. | S. A., sec. 321.

## CHAPTER THIRTY-TWO.

### OF THE WARRANT OF ARREST.


Sec.
2382. Examination of informant and his witnesses.
2383. When warrant of arrest to issue.
2384. Definition and form of warrant.
2385. What warrant is to contain.
2386. Peace officer defined.
2387. Duty of officer making arrest.
2388. Statement and depositions to be sent to magistrate who makes examination.
2389. Defendant must be taken before magistrate without delay.


Mar. 3, 1899.
30 Stat. L., 1316–1317.
Examination of informant and his witnesses.

SEC. 2382. That when complaint is made to a magistrate of the commission of a crime he must examine the informant on oath, and reduce his statement to writing and cause the same to be subscribed by him, and also take the depositions of any witnesses that the informant may produce in support thereof.

Carter Code, sec. 273; Charlton Code, sec. 273.

Rice *v.* Ames (180 U. S. Rep., 371). | U. S. *v.* Tureand (20 Fed. Rep., 621).
U. S. *v.* Sapinkow (90 Fed. Rep., 654). | State *v.* Guglielmo (79 Pac. Rep., 577).

When warrant of arrest to issue.

SEC. 2383. That thereupon, if the magistrate be satisfied that the crime complained of has been committed, and that there is probable cause to believe that the person charged has committed it, he must issue a warrant of arrest.

Carter Code, sec. 274; Charlton Code, sec. 274.

U. S. *v.* Thompson (2 Cranch (C. C.), 409). | State *v.* Guglielmo (79 Pac. Rep., 577).

Definition and form of warrant.

SEC. 2384. That a warrant of arrest is an order in writing, in the name of the United States, signed by a magistrate with his name of office, commanding the arrest of the defendant, and may be substantially in the following form: "District of Alaska, division No. .

"In the name of the United States of America.

"To the United States marshal of the District of Alaska or any deputy, greeting:

"Information upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing C D thereof:

"You are, therefore, hereby commanded forthwith to arrest the above-named C D and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate.

"Dated at , this day of , hundred and

"E F,

"Commissioner, ex officio Justice of the Peace."

Carter Code, sec. 275; Charlton Code, sec. 275.

What warrant is to contain.

SEC. 2385. That the warrant must specify the name of the defendant, or if it be unknown to the magistrate the defendant may be designated by a fictitious name, with a statement therein that his true



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name is unknown, and it must also state a crime in respect of which the magistrate has authority to issue the warrant.

Carter Code, sec. 276; Charlton Code, sec. 276.

West *v.* Cabell (153 U. S. Rep., 78). | Williams *v.* Tidball (8 Pac. Rep., 351).

Peace officer defined.

SEC. 2386. That a peace officer is the United States marshal or any deputy, and a warrant of arrest must be directed to and executed by such officer. For this purpose the marshal or any deputy is to be deemed a constable.

Carter Code, sec. 277; Charlton Code, sec. 277.

Duty of officer making arrest.

SEC. 2387. That the officer making the arrest must take the defendant before the magistrate who issued the warrant or, in case he be absent or unable to act, before the nearest or most accessible magistrate, and the officer must at the same time deliver to the magistrate the warrant, with his return indorsed and subscribed by him.

Carter Code, sec. 278; Charlton Code, sec. 278.

Statement and depositions to be sent to magistrate who makes examination.

SEC. 2388. That if the defendant be taken for examination before a magistrate other than the one who issued the warrant, the statement and depositions on which the warrant was granted must be sent to that magistrate; or, if they can not be procured, the informant and his witnesses must be subpœnaed to give their testimony anew.

Carter Code, sec. 279; Charlton Code, sec. 279.

Defendant must be taken before magistrate without delay.

SEC. 2389. That the defendant must in all cases be taken before the magistrate without delay.

Carter Code, sec. 280; Charlton Code, sec. 280.

State *v.* Belding (71 Pac. Rep., 330).

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# CHAPTER THIRTY-THREE.

## OF THE ARREST, HOW AND BY WHOM MADE.


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Mar. 3, 1899.
30 Stat. L., 1317–1318.
Arrest defined.

SEC. 2390. That arrest is the taking of a person into custody that he may be held to answer for a crime.

Carter Code, sec. 281; Charlton Code, sec. 281.

By whom an arrest may be made.

SEC. 2391. That an arrest may be made either:
First. By a peace officer, under a warrant;
Second. By a peace officer, without a warrant; or
Third. By a private person.

Carter Code, sec. 282; Charlton Code, sec. 282.

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Every person bound to aid an officer in making an arrest.

SEC. 2392. That every person must aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

Carter Code, sec. 283; Charlton Code, sec. 283.

Arrest, how made.

SEC. 2393. That an arrest is made by an actual restraint of the person of the defendant or by his submission to the custody of the officer.

Carter Code, sec. 284; Charlton Code, sec. 284.

No further restraint allowed than is necessary.

SEC. 2394. That the defendant is not to be subjected to any more restraint than is necessary and proper for his arrest and detention.

Carter Code, sec. 285; Charlton Code, sec. 285.

Officer must state his authority and show warrant if required.

SEC. 2395. That the officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required by the defendant.

Carter Code, sec. 286; Charlton Code, sec. 286.

If defendant flee or resist, officer may use necessary means.

SEC. 2396. That if, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary and proper means to effect the arrest.

Carter Code, sec. 287; Charlton Code, sec. 287.
Lander *v.* Miles (3 Or. Rep., 36).

When officer may break open door or window.

SEC. 2397. That the officer may break open any outer or inner door or window of a dwelling house, or otherwise, to execute the warrant, if after notice of his authority and purpose he be refused admittance.

Carter Code, sec. 288; Charlton Code, sec. 288.

Same subject.

SEC. 2398. That the officer may break open any outer or inner door or window of a dwelling house, or otherwise, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Carter Code, sec. 289; Charlton Code, sec. 289.

When peace officer may arrest without warrant.

SEC. 2399. That a peace officer may, without a warrant, arrest a person—

First. For a crime committed or attempted in his presence;

Second. When the person arrested has committed a felony, although not in his presence;

Third. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Carter Code, sec. 290; Charlton Code, sec. 290.
State *v.* Williams (77 Pac. Rep., 965).

May break open door or window if admittance refused.

SEC. 2400. That to make arrests as provided in the last section the officer may break open any door or window, as provided in sections twenty-three hundred and ninety-seven and twenty-three hundred and ninety-eight of this title, if after notice of his office and purpose he be refused admittance.

Carter Code, sec. 291; Charlton Code, sec. 291.

Officer must state his authority and cause of arrest, except.

SEC. 2401. That when arresting a person without a warrant the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a crime, or is pursued immediately after its commission, or an escape.

Carter Code, sec. 292; Charlton Code, sec. 292.

When officer may take person before magistrate, arrested by a bystander.

SEC. 2402. That an officer may, without warrant, take before a magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Carter Code, sec. 293; Charlton Code, sec. 293.

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When magistrate may commit for crime committed in his presence.

SEC. 2403. That when a crime is committed in the presence of a magistrate he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him upon a warrant of arrest.

Carter Code, sec. 294; Charlton Code, sec. 294.

State *v.* Williams (77 Pac. Rep., 965).

Arrest by private person, when allowed.

SEC. 2404. That a private person may arrest another for the causes specified in section twenty-three hundred and ninety-nine of this title, in like manner and with like effect as a peace officer without warrant.

Carter Code, sec. 295; Charlton Code, sec. 295.

Lauder *v.* Miles (3 Or. Rep., 36).

Must take person before a magistrate or deliver him to a peace officer.

SEC. 2405. That a private person who has arrested another for the commission of a crime must without unnecessary delay take him before a magistrate or deliver him to a peace officer.

Carter Code, sec. 296; Charlton Code, sec. 296.

Pursuit of person rescued or escaping.

SEC. 2406. That if a person arrested escape or be rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in said District.

Carter Code, sec. 297; Charlton Code, sec. 297.

May use proper means in making an original arrest.

SEC. 2407. That to retake the person escaping or rescued, the person pursuing may use all means and do any act necessary and proper in making an original arrest.

Carter Code, sec. 298; Charlton Code, sec. 298.

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## CHAPTER THIRTY-FOUR.

### OF THE EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.


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Mar. 3, 1899.
30 Stat. L., 1318–1322.

Magistrate to inform defendant of the charge and his right to counsel.

SEC. 2408. That when the defendant is brought before a magistrate upon an arrest, either with or without warrant, on a charge of having committed a crime, the magistrate must immediately inform him of the charge against him and of his right to the aid of counsel before any further proceedings are had.

Carter Code, sec. 299; Charlton Code, sec. 299.

Hannah *v.* Wells (4 Or. Rep., 249).

Time to send, and sending for counsel.

SEC. 2409. That he must allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and may, upon the request of the defendant, require a peace officer to take a message to such counsel in the precinct, town, or village as the defendant may name. The officer, when required by the magistrate, must take the message without delay.

Carter Code, sec. 300; Charlton Code, sec. 300.

Examination, when to proceed.

SEC. 2410. That immediately after the appearance of counsel, or if, after awaiting a reasonable time, none appear, or if the defendant do not require counsel, the magistrate must proceed to examine the case.

Carter Code, sec. 301; Charlton Code, sec. 301.

Examination, when completed; adjournment.

SEC. 2411. That the examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, adjourn it; and the adjournment can not be for more than one day at each time, nor more than six days in all unless by consent or on motion of the defendant.

Carter Code, sec. 302; Charlton Code, sec. 302.

On adjournment defendant to be committed or given bail.

SEC. 2412. That if an adjournment be had for any cause, the magistrate must commit the defendant for examination, or may, in his discretion, discharge him from custody until the close of the examination, upon his giving bail or depositing money in lieu thereof, as provided in this act, for his appearance at the time to which the examination is adjourned.

Carter Code, sec. 303; Charlton Code, sec. 303.

Hannah *v.* Wells (4 Or. Rep., 249). | State *v.* Gardner (45 Pac. Rep., 753).

Form of commitment.

SEC. 2413. That the commitment for examination is by an indorsement, signed by the magistrate, on a warrant of arrest, to the following effect: "The within-named A B, having been brought before me under this warrant, is committed for examination to the custody of the officer having him in charge."

Carter Code, sec. 304; Charlton Code, sec. 304.

When witnesses to be subpœnaed.

SEC. 2414. That at the examination the magistrate must, in the first place, read to the defendant the statement and affidavits upon which the warrant of arrest is issued, and if the defendant request it, must subpœna the informant and witnesses so examined, if they be within fifty miles of the place where the magistrate sits, and if they be within such distance he must issue subpœnas for additional witnesses when required by the informant or the defendant.

Carter Code, sec. 305; Charlton Code, sec. 305.

Witnesses to be examined in presence of defendant.

SEC. 2415. That the witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf or against him.

Carter Code, sec. 306; Charlton Code, sec. 306.

Defendant to be informed of his right to make a statement.

SEC. 2416. That when the examination of the witnesses on the part of the United States is closed, the magistrate must inform the defendant that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him, if

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he sees fit, to answer the charge and explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver can not be used against him on the trial.

Carter Code, sec. 307; Charlton Code, sec. 307.

State *v.* Hatcher (44 Pac. Rep., 584). | State *v.* Andrews (58 Pac. Rep., 765).

Waiver of his right and effect thereof.

SEC. 2417. That if the defendant waive his right to make a statement, the magistrate must make a memorandum thereof in the proceedings; but the fact of his waiver can not be used against the defendant on the trial.

Carter Code, sec. 308; Charlton Code, sec. 308.

Statement of defendant, how taken.

SEC. 2418. That if the defendant choose to make a statement, the magistrate must proceed to take it in writing, and must put to the defendant the following questions only:

First. What is your name and age?

Second. Where were you born?

Third. Where do you reside, and how long have you resided there?

Fourth. What is your business or occupation?

Fifth. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Carter Code, sec. 309; Charlton Code, sec. 309.

Same subject.

SEC. 2419. That the answer of the defendant to each of the questions must be read to him as it is taken down. He may thereupon correct or add to his answer until it is made conformable to what he declares to be the truth.

Carter Code, sec. 310; Charlton Code, sec. 310.

How reduced to writing and how authenticated.

SEC. 2420. That the statement of the defendant must be reduced to writing by the magistrate or under his direction, and authenticated in the following form:

First. It must set forth that the defendant was informed of his rights as provided in section twenty-four hundred and sixteen of this title, and that after being so informed he made the statement.

Second. It need not contain the questions put to the defendant, but must contain his answers thereto, with the corrections and additions, if any are made.

Third. It may be signed by the defendant, but if he refuse to sign it, his reason therefor must be stated as he gives it.

Fourth. It must be signed and certified to by the magistrate.

Carter Code, sec. 311; Charlton Code, sec. 311.

State *v.* Hatcher (44 Pac. Rep., 584). | State *v.* Andrews (58 Pac. Rep., 765).

Statement of defendant, when used as testimony.

SEC. 2421. That the statement of the defendant is competent testimony to be laid before the grand jury, and may be given in evidence against the defendant on the trial.

Carter Code, sec. 312; Charlton Code, sec. 312.

Defendant's witnesses to be examined, when.

SEC. 2422. That after the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

Carter Code, sec. 313; Charlton Code, sec. 313.

Magistrate may exclude witnesses.

SEC. 2423. That the magistrate may exclude the witnesses who have not been examined during the examination of the defendant, or during the examination of the witnesses for the United States or the defendant.

Carter Code, sec. 314; Charlton Code, sec. 314.

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Testimony of witnesses need not be reduced to writing.

SEC. 2424. That the testimony of the witnesses need not be reduced to writing, except as provided in section twenty-three hundred and eighty-two of this title, but the magistrate must make a memorandum of the name of each witness, his place of residence, and business or occupation.

Carter Code, sec. 315; Charlton Code, sec. 315.

Proceedings in testimony, how and by whom kept.

SEC. 2425. That the magistrate must keep the statement and depositions taken on the information, the statement of the defendant, if any, together with the memorandum specified in sections twenty-four hundred and seventeen and twenty-four hundred and twenty-four of this title, until they are returned to the proper court, and must not permit them to be inspected by any person except the district attorney, or the attorney who acts for him, and the defendant and his counsel.

Carter Code, sec. 316; Charlton Code, sec. 316.

Violation of last section, how punished.

SEC. 2426. That a violation of the last section is punishable as a contempt by the court having jurisdiction of the crime charged against the defendant.

Carter Code, sec. 317; Charlton Code, sec. 317.

Informant may employ counsel, but district attorney to control proceedings.

SEC. 2427. That the informant may employ counsel to appear against the defendant on the examination in every stage of the proceedings; but the district attorney, either in person or by some attorney authorized to act for him, is entitled to appear on behalf of the United States and control and conduct the prosecution.

Carter Code, sec. 318; Charlton Code, sec. 318.

Defendant, when and how discharged.

SEC. 2428. That after hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a crime has not been committed or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the warrant signed by him, to the following effect: "There being no sufficient cause shown to believe the within-named A B guilty of the crime within mentioned, I order him to be discharged."

Carter Code, sec. 319; Charlton Code, sec. 319.

Same subject.

SEC. 2429. That if the arrest have been made without warrant, the discharge may be made by a certificate in writing, signed by the magistrate, to the following effect: "There being no sufficient cause shown to believe A B, brought before me without warrant, guilty of the crime of (designating it generally), I order him to be discharged." This certificate must be delivered to the defendant.

Carter Code, sec. 320; Charlton Code, sec. 320.

Defendant, when to be committed; order for commitment.

SEC. 2430. That if, however, it appear from the examination that a crime has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must make a written order, signed by him, to the following effect: "It appearing to me from the testimony produced before me on the examination that the crime of (designating it generally) has been committed, and that there is sufficient cause to believe A B guilty thereof, I order him to be held to answer the same."

Carter Code, sec. 321; Charlton Code, sec. 321.

State *v.* Andrews (58 Pac. Rep., 765).

Malheur County *v.* Carter (98 Pac. Rep., 489).

Defendant, how committed.

SEC. 2431. That if the magistrate order the defendant to be held to answer, as provided in the last section, he must make out a commitment, signed by him with his name of office, and deliver it with the

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defendant to the officer to whom he is committed, or if that officer be not present, to any peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Carter Code, sec. 322; Charlton Code, sec. 322.

Form of commitment.

SEC. 2432. That the commitment my be in substantially the following form:

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"An order having been this day made by me that A B be held to answer upon a charge (designating it generally), you are therefore commanded to receive him in your custody, and detain him until legally discharged.

"Dated at , this day of , hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Carter Code, sec. 323; Charlton Code, sec. 323.

Commitment to be directed to marshal, and how defendant to be kept.

SEC. 2433. That the commitment must be directed to the United States marshal, who must receive and detain the defendant by such means as may be necessary and proper therefor.

Carter Code, sec. 324; Charlton Code, sec. 324.

Order for bail on commitment.

SEC. 2434. That if the crime be bailable, the magistrate must admit the defendant to bail by adding to the order mentioned in section twenty-four hundred and thirty of this Title words to the following effect: "And I have admitted him to bail, to answer in a sum of dollars." The defendant may either put in bail, according to the order of admission, then or afterwards; but if it be not put in before he is delivered to the officer for commitment, the magistrate must indorse the amount of the bail on the writ.

Carter Code, sec. 325; Charlton Code, sec. 325.

Undertaking for material witnesses.

SEC. 2435. That on holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on behalf of the United States a written undertaking, to the effect that he will appear and testify at the court in which the defendant is held to answer, or that he will pay to the United States the sum of one hundred dollars.

Carter Code, sec. 326; Charlton Code, sec. 326.

Security for appearance of witnesses, when may be required.

SEC 2436. That when the magistrate has good reason to believe, by proof produced before him, that any such witness will not appear and testify unless security therefor be given, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

Carter Code, sec. 327; Charlton Code, sec. 327.

Infants and married women may be required to give security.

SEC. 2437. That infants and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in the last section.

Carter Code, sec. 328; Charlton Code, sec. 328.

Witness refusing to give undertaking must be committed.

SEC. 2438. That if a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to the custody of the marshal until he comply or be legally discharged.

Carter Code, sec. 329; Charlton Code, sec. 329.

Magistrate to return proceedings and papers.

SEC. 2439. That when a magistrate has discharged a defendant or has held him to answer as provided in sections twenty-four hundred

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and twenty-eight, twenty-four hundred and twenty-nine, and twenty-four hundred and thirty, of this title he must return to the court at which the defendant is held to answer, at or before the first day of the next term thereof, the warrant, if any, the statement and depositions of the informant and his witnesses, the statement of the defendant, if he have made one, the memoranda specified in sections twenty-four hundred and seventeen and twenty-four hundred and twenty-four of this title and all undertakings of bail for the appearance of witnesses taken by him.

Carter Code, sec. 330; Charlton Code, sec. 330.

## CHAPTER THIRTY-FIVE.

### OF THE PREVENTION OF CRIMES AND SECURITY TO KEEP THE PEACE.


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Mar. 3, 1899.
30 Stat. L., 1322–1324.

Resistance to the commission of crime, by whom made.

SEC. 2440. That resistance to the commission of crime may be lawfully made by the party about to be injured, or by any other person in his aid or defense—

First. To prevent a crime against his person;

Second. To prevent an illegal attempt, by force, to take or injure property in his possession.

Carter Code, sec. 331; Charlton Code, sec. 331.

State *v.* Young (96 Pac. Rep., 1067).

NOTE.—See chap. 2, Criminal Code.

Officers of justice may interfere to prevent crime, and how.

SEC. 2441. That crimes may be prevented by the intervention of the officers of justice—

First. By requiring security to keep the peace;

Second. By forming a police in towns, villages, and settlements and by requiring their attendance at exposed places;

Third. By suppressing riots.

Carter Code, sec. 332; Charlton Code, sec. 332.

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Persons acting in their aid are justified.

SEC. 2442. That when the officers of justice act in the prevention of crime other persons who by their command act in their aid are justified in so doing.

Carter Code, sec. 333; Charlton Code, sec. 333.

Information of threatened crime, before whom laid.

SEC. 2443. That an information may be laid before any of the magistrates mentioned in section twenty-three hundred and eighty of this title that a person has threatened to commit a crime against the person or property of another.

Carter Code, sec. 334; Charlton Code, sec. 334.

Examination of complainant and witnesses.

SEC. 2444. That when the complaint is made to a magistrate, he must examine the complainant on oath, and reduce his statement to writing, and cause the same to be subscribed by him, and also take the depositions of any witnesses that the complainant may produce in support thereof.

Carter Code, sec. 335; Charlton Code, sec. 335.

Warrant of arrest, when issued.

SEC. 2445. That thereupon, if it appear to the magistrate that there is good reason to fear the commission of the crime threatened by the person complained of, he must issue a warrant for the arrest of such person.

Carter Code, sec. 336; Charlton Code, sec. 336.

Warrant of arrest, to whom directed, form of, and how served.

SEC. 2446. That the warrant must be directed and executed as a warrant of arrest, and may be substantially in the same form, except that, instead of reciting the commission of a crime, it must recite the substance of the threat to commit one, according to the information.

Carter Code, sec. 337; Charlton Code, sec. 337.

Proceedings on complaint being controverted.

SEC. 2447. That when the person complained of is brought before a magistrate, if the charge be controverted he must take the testimony in relation thereto, and the evidence must be reduced to writing and subscribed by the witness.

Carter Code, sec. 338; Charlton Code, sec. 338.

Conduct of the examination as to adjournment, commitment, and bail.

SEC. 2448. That the magistrate may adjourn the examination and commit the person complained of, or take bail or a deposit of money in lieu thereof, as provided in sections twenty-four hundred and eleven, twenty-four hundred and twelve, and twenty-four hundred and thirteen of this title.

Carter Code, sec. 339; Charlton Code, sec. 339.

Subpœnas, when issued.

SEC. 2449. That the magistrate must issue subpœnas for witnesses for the complainant or person complained of if such witnesses be within fifty miles from the place where the magistrate is sitting.

Carter Code, sec. 340; Charlton Code, sec. 340.

Persons complained of entitled to make statement.

SEC. 2450. That the person complained of is entitled, if he choose, to make a statement concerning the charges against him, as provided in sections twenty-four hundred and eighteen, twenty-four hundred and nineteen, and twenty-four hundred and twenty of this title.

Carter Code, sec. 341; Charlton Code, sec. 341.

When to be discharged.

SEC. 2451. That if from the examination it appear that there is no good reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged; the order for the discharge must be indorsed upon the warrant, and signed by the magistrate with his name of office, and may be to the following effect: "There being no good reason shown to fear the commission of the crime within mentioned by the within-named A B, I order him to be discharged."

Carter Code, sec. 342; Charlton Code, sec. 342.

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Security to keep the peace, when required.

SEC. 2452. That if, however, there be good reason to fear the commission of the crime, the person complained of must be required to enter into an undertaking in such sum, not exceeding two thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the district court, and in the meantime to keep the peace toward the people of said District, and particularly toward the complainant.

Carter Code, sec. 343; Charlton Code, sec. 343.

Qualifications of sureties.

SEC. 2453. That the sureties in the undertaking must have the qualifications of bail, and justify thereto as provided in sections twenty-three hundred and twenty-seven and twenty-three hundred and twenty-eight of this title.

Carter Code, sec. 344; Charlton Code, sec. 344.

Persons complained of to be committed if security be not given.

SEC. 2454. That if the undertaking required by section twenty-four hundred and fifty-two of this title be given, the party complained of must be discharged; but if he do not give it, the magistrate must commit him to the custody of the marshal, specifying in the commitment the requirement to give security, the amount thereof, and the omission to give the same.

Carter Code, sec. 345; Charlton Code, sec. 345.

Form of commitment.

SEC. 2455. That the commitment may be in substantially the following form:

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"An order having been this day made by me that A B give an undertaking in the sum of —— dollars, as security to keep the peace and abide the order of the district court, and the said A B having failed to give such undertaking, you are therefore commanded to receive him into your custody, and detain him until legally discharged.

"Dated at , this day of , hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Carter Code, sec. 346; Charlton Code, sec. 346.

Breach of peace committed in presence of court or magistrate.

SEC. 2456. That a person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his property, or who contends with another with angry words to the disturbance of the peace, may be ordered by the court or magistrate, without warrant or other proof, to give security as provided in section twenty-four hundred and fifty-two, or if he omit to do so may be committed as provided in section twenty-four hundred and fifty-four of this title.

Carter Code, sec. 347; Charlton Code, sec. 347.

Person committed for not giving security, how discharged.

SEC. 2457. That a person committed for not giving an undertaking to keep the peace may, at any time thereafter, upon giving the required undertaking, be discharged from custody by the order of any magistrate before whom the information might have been laid.

Carter Code, sec. 348; Charlton Code, sec. 348.

Undertaking or statement to be transmitted to district court.

SEC. 2458. That an undertaking to keep the peace must be transmitted by the first day of the term to the district court by the magistrate to whom it is given; but if the person be committed for want of an undertaking, the magistrate must, in like manner, transmit a statement of the commitment.

Carter Code, sec. 349; Charlton Code, sec. 349.

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Evidence to be transmitted with undertaking.

SEC. 2459. That with the undertaking or statement mentioned in the last section the magistrate must also transmit the evidence taken by him for and against the charge.

Carter Code, sec. 350; Charlton Code, sec. 350.

Undertaking, when forfeited.

SEC. 2460. That a person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court, and abide the order thereof; and if he do not, the court must direct the fact to be entered in its journal, and the undertaking is thereupon forfeited. The undertaking is also forfeited upon the person complained of being convicted of a breach of the peace.

Carter Code, sec. 351; Charlton Code, sec. 351.

Proceedings in case of forfeiture, how regulated.

SEC. 2461. That sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-one of this title, inclusive, shall apply to and govern the excusing of a forfeiture of the undertaking, the remission of the forfeiture, and the prosecution of the undertaking.

Carter Code, sec. 352; Charlton Code, sec. 352.

Proceeding if complainant do not appear in district court.

SEC. 2462. That if the complainant do not appear at the district court, the person complained of may be discharged, unless good cause to the contrary be shown.

Carter Code, sec. 353; Charlton Code, sec. 353.

Proceeding in district court.

SEC. 2463. That if both parties appear, the court must hear the proofs and allegations transmitted by the magistrate, and such other evidence as the parties may produce, and may either discharge the undertaking or require a new one, for a time not exceeding one year.

Carter Code, sec. 354; Charlton Code, sec. 354.

Right of sureties in undertaking to keep the peace.

SEC. 2464. That the sureties in an undertaking to keep the peace are entitled to the rights and authority of bail, as provided in chapter twenty-two of this act, and may be exonerated from their undertaking in the manner therein prescribed.

Carter Code, sec. 355; Charlton Code, sec. 355.

When court may require defendant to give security.

SEC. 2465. That the court before whom any person is convicted of a crime, which by the judgment of such court is punished otherwise than by death or imprisonment in the penitentiary, may require such person to enter into an undertaking as provided in section twenty-four hundred and fifty-two, of this title for a period not exceeding two years, and in default thereof may commit him until the undertaking be given or the period expired.

Carter Code, sec. 356; Charlton Code, sec. 356.

Undertaking to keep the peace to include good behavior.

SEC. 2466. That an undertaking to keep the peace shall be taken and deemed to be an undertaking to be of good behavior also, and can not be required except as provided in this chapter.

Carter Code, sec. 357; Charlton Code, sec. 357.

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# CHAPTER THIRTY-SIX.

## OF THE SUPPRESSION OF RIOTS.


Sec.
2467. How and by whom rioters commanded to disperse.
2468. If rioters do not disperse, to be arrested.
2469. Consequence of refusing to aid officers.
2470. Magistrate or officer neglecting to act, guilty of misdemeanor.
2471. Proceedings if rioters do not disperse.
2472. If death ensue, who deemed guilty thereof.


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Mar. 3, 1899.
30 Stat. L., 1324–1325.

How and by whom rioters commanded to disperse.

SEC. 2467. That when any persons, to the number of three or more, whether armed or not, are unlawfully or riotously assembled in any town, village, or settlement, the marshal or any deputy, the chief executive officer of such town, village, or settlement, and the commissioners as justices of the peace for the precinct where the assemblage takes place, must go among the persons assembled, or as near to them as they can with safety, and command them in the name of the United States to disperse.

Carter Code, sec. 358; Charlton Code, sec. 358.

If rioters do not disperse, to be arrested.

SEC. 2468. That if the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present.

Carter Code, sec. 359; Charlton Code, sec. 359.

Consequence of refusal to aid officers.

SEC. 2469. That if a person so commanded to aid the magistrate or officers, or any of them, mentioned in section twenty-four hundred and sixty-seven of this title neglect to do so, he is deemed one of the rioters, and may be treated and is punishable accordingly.

Carter Code, sec. 360; Charlton Code, sec. 360.

Magistrate or officer neglecting to act, guilty of misdemeanor.

SEC. 2470. That if a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section twenty-four hundred and sixty-seven, of this title neglect to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Carter Code, sec. 361; Charlton Code, sec. 361.

Proceedings if rioters do no disperse.

SEC. 2471. That if the persons assembled and commanded to disperse do not immediately disperse, any two of the magistrates or officers mentioned in section twenty-four hundred and sixty-seven of this title may command the aid of a sufficient number of persons, armed or otherwise, as may be necessary, and may proceed in such manner as in their judgment may be most expedient to disperse the assembly and arrest the offenders.

Carter Code, sec. 362; Charlton Code, sec. 362.

If death ensue, who deemed guilty thereof.

Amended June 6, 1900, 31 Stat. L., 330.

SEC. 2472. That if, in the effort to suppress or disperse any unlawful or riotous assembly, or to arrest or detain any of the persons engaged therein, any such rioters or other persons then present as spectators or otherwise be killed or wounded, the magistrate and officers and persons acting in their aid are guiltless thereof; but if any such magistrate or officers or persons acting in their aid be killed or wounded, all the persons engaged in such assembly are guilty thereof: *Provided*, Section fifteen of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June eighteenth, eighteen hundred and seventy-eight, shall not be construed to apply to the District of Alaska.

Vol. 20 Stat. L., p. 152.

Carter Code, sec. 363; Charlton Code, sec. 363.

NOTE.—Sec. 15 of act June 18, 1878 (20 Stat. L., p. 152), is as follows:

"From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section, and any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding ten thousand dollars or imprisonment not exceeding two years, or by both such fine and imprisonment."

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# CHAPTER THIRTY-SEVEN.

## OF THE CORONER'S INQUEST AND PROCEEDINGS THEREON.


Sec.
2473. Commissioners to act as coroners.
2474. Duty of coroners.
2475. To summon jury to hold inquest.
2476. Oath of jury.
2477. Witnesses to be subpœnaed to include physician.
2478. Compelling attendance of witnesses.
2479. Verdict of jury.
2480. Testimony, how taken.
2481. To issue warrant, when, and proceedings thereon.
2482. When coroner to bury body.
2483. Coroner's statement of expenses.
2484. Inventory of property found on the deceased.
2485. Disposition of property.


Mar. 3, 1899.
30 Stat. L., 1325–1326.
Commissioners to act as coroners.

SEC. 2473. That the commissioners appointed by the President of the United States and those appointed by the judge of the district court in pursuance of the provisions of this act shall perform the duties and exercise the authority of coroners.

Carter Code, sec. 364; Charlton Code, sec. 364.

Duty of coroners.

SEC. 2474. That every such commissioner has the power, and it is his duty, when he is informed that a person has been killed or dangerously wounded by another or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by criminal means or has committed suicide, to inquire by the intervention of a jury into the cause of the death or wound, and to perform the other duties incidental thereto in the manner prescribed by statute.

Carter Code, sec. 365; Charlton Code, sec. 365.
Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

To summon jury to hold inquest.

SEC. 2475. That in such case he must go to the place where the dead or wounded person is, and forthwith summon six persons, qualified by law to serve as jurors, to appear before him forthwith at a specified place, to inquire into the cause of the death or wound.

Carter Code, sec. 366; Charlton Code, sec. 366.
Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

Oath of jurors.

SEC. 2476. That when the jurors to the number of six appear, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to give a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

Carter Code, sec. 367; Charlton Code, sec. 367.
Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

Witnesses to be subpœnaed to include physician.

SEC. 2477. That the commissioner must subpœna and examine as witnesses every person who in his opinion has knowledge of the material facts, and also a surgeon or physician, who must, in the presence of the jury, inspect the body and give a professional opinion as to the cause of the death or wounding.

Carter Code, sec. 368; Charlton Code, sec. 368.
Pruden *v.* Grant County (7 Pac. Rep., 308).
Cox. *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

Compelling attendance of witnesses.

SEC. 2478. That for the purpose of subpœnaing witnesses, compelling them to attend and testify, and punishing them for disobedience, the commissioner shall have the power and authority conferred

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upon justices of the peace with respect to examinations in criminal cases.

Carter Code, sec. 369; Charlton Code, sec. 369.

Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

Verdict of jury.

SEC. 2479. That when the examination is closed the jury, or two-thirds of their number, must give their verdict in writing, and signed by them, setting forth, so far as they know or have good reason to believe, who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded, and whether any person, and who, is guilty of a crime thereby.

Carter Code, sec. 370; Charlton Code, sec. 370.

Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

Testimony, how taken.

SEC. 2480. That the testimony of the witnesses must be reduced to writing by the commissioner, or under his direction, and the verdict of the jury delivered to him.

Carter Code, sec. 371; Charlton Code, sec. 371.

Cox *v.* Royal Tribe of Joseph (71 Pac. Rep., 73).

To issue warrant, when, and proceedings thereon.

SEC. 2481. That if the jury find that a crime was committed in the killing or the wounding, and also charge a person with the commission of the crime, the commissioner, as a magistrate, must forthwith issue a warrant for the arrest of such person as on an information, and when the defendant is brought before him must proceed to examine the charge contained in the verdict, and hold the defendant to answer, or discharge him therefrom, in the same manner in all respects as upon a warrant of arrest.

Carter Code, sec. 372; Charlton Code, sec. 372.

When coroner to bury body.

SEC. 2482. That when a commissioner shall hold an inquest upon the body of a stranger or pauper, and no friend or relative appears to claim the body for burial, the commissioner must cause the same to be plainly and decently buried.

Carter Code, sec. 373; Charlton Code, sec. 373.

Coroner's statement of expenses.

SEC. 2483. That the commissioner must return to the district court a written statement, verified by his own oath, of the expenses of any inquest or burial held by him, including his fees and the fees of jurors and witnesses, which account, upon being allowed by the district court, must be paid to the persons to whom the items thereof are due by the United States marshal, from moneys appropriated to pay the expenses of United States courts.

Carter Code, sec. 374; Charlton Code, sec. 374.

Cook *v.* Multnomah County (8 Or. Rep., 171).

Pruden *v.* Grant County (7 Pac. Rep., 308).

Inventory of property found on the deceased.

SEC. 2484. That if money or other property be found on the body, the commissioner must make an inventory of it, and take the same into his possession, which inventory he must verify and return to the district court, with the account specified in the last section.

Carter Code, sec. 375; Charlton Code, sec. 375.

Oh Chow *v.* Brockway (28 Pac. Rep., 384).

Disposition of property.

SEC. 2485. That the commissioner must, within thirty days from the inquest, deliver the money, or other property, to the clerk of the district court. If it be other property the clerk must cause it to be sold as upon execution, and after deducting the expenses of sale, deposit the same in the manner provided in the case of moneys collected on judgments in favor of the United States. If it be money, he shall also so deposit it.

Carter Code, sec. 376; Charlton Code, sec. 376.

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# CHAPTER THIRTY-EIGHT.

## OF SEARCH WARRANTS, AND PROCEEDINGS THEREON.

Sec.
2486. Who may issue search warrant.
2487. On what ground search warrant may issue.
2488. Search warrant issued only upon probable cause.
2489. Examination of complainant and his witnesses.
2490. When magistrate to issue warrant, form of.
2491. Power of officer in executing search warrant.
2492. Officer must give receipt for property taken.
2493. Property when delivered to magistrate, how disposed of.
2494. Within what time warrant must be executed and returned.
2495. Return of warrant and delivery of property.
2496. Magistrate to give copy of inventory to whom.
2497. Proceedings if grounds of issuing warrants controverted.
2498. Property, when to be restored.
2499. Return of magistrate.
2500. When person procuring search warrant guilty of misdemeanor.
2501. Person charged with crime may be searched. Disposition of weapon.

Mar. 3, 1899.
30 Stat. L., 1326–1328.
Who may issue search warrant.

SEC. 2486. That a magistrate authorized to issue a warrant of arrest has authority to issue a search warrant, directed to the peace officer, commanding him to search for personal property at any place within said District and bring it before the magistrate.

Carter Code, sec. 377; Charlton Code, sec. 377.

On what ground search warrant may issue.

SEC. 2487. That a search warrant may be issued upon either of the following grounds:

First. When the property was stolen or embezzled, in which case it may be taken, on the warrant, from any house or other place in which it was concealed or may be found, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

Second. When the property was used as a means of committing a felony, in which case it may be taken, on the warrant, from any house or other place in which it is concealed or may be found, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be;

Third. When the property is in the possession of any person with the intent to use it as the means of committing a crime, or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from the possession of such person, or the person to whom he may have so delivered it, or from any house or other place occupied by them or under their control, or either of them.

Carter Code, sec. 378; Charlton Code, sec. 378.

NOTE.—See sec. 2373, chap. 30, ante.

Search warrant issued only upon probable cause.

SEC. 2488. That a search warrant can not be issued but upon probable cause, shown by affidavit, naming or describing the person, and describing the property and the place to be searched.

Carter Code, sec. 379; Charlton Code, sec. 379.

Examination of complainant and his witnesses.

SEC. 2489. That the magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce and take their depositions in writing, and cause them to be subscribed by the parties making them.

Carter Code, sec. 380; Charlton Code, sec. 380.

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When magistrate to issue warrant, form of.

SEC. 2490. That thereupon, if the magistrate be satisfied that there is probable cause to believe in the existence of the grounds of the application, he must issue the warrant, which may be in substantially the following form:

"District of Alaska, division No. .

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"Information on oath having been this day laid before me (stating the particular grounds of the application, according to section twenty-four hundred and eighty-seven of this title), you are therefore hereby commanded, at any time in the day or night, to make immediate search on the person of A B (or in the house situated—describing it—or any other place to be searched with reasonable particularity, as the case may be) for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith to me at (stating the place).

"Dated at , this day of , hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Carter Code, sec. 381; Charlton Code, sec. 381.

Power of officer in executing search warrant.

SEC. 2491. That in the execution or service of a search warrant, the officer has the same power and authority, in all respects, to break open any door or window, to use all necessary and proper means to overcome any forcible resistance made to him, or to call any other person to his aid, that he has in the execution or service of a warrant of arrest.

Carter Code, sec. 382; Charlton Code, sec. 382.

Officer must give receipt for property taken.

SEC. 2492. That when the officer takes property under the warrant, he must give a receipt for the property taken, specifying it in detail, to the person from whom he takes it or in whose possession it is found, or in the absence of any person he must leave it in the place where he found the property.

Carter Code, sec. 383; Charlton Code, sec. 383.

Property when delivered to magistrate, how disposed of.

SEC. 2493. That when the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections twenty-three hundred and seventy-four, twenty-three hundred and seventy-five, and twenty-three hundred and seventy-eight of this title; but if it were taken on a warrant issued on the grounds stated in subdivisions two and three of section twenty-four hundred and eighty-seven of this title he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or any other court in which the crime in respect to which the property was taken is triable.

Carter Code, sec. 384; Charlton Code, sec. 384.

Within what time warrant must be executed and returned.

SEC. 2494. That a search warrant must be executed and returned to the magistrate by whom it was issued within ten days from its date, unless such magistrate, before the expiration of such time, shall, by indorsement thereon, extend the time for thirty days. After the expiration of the time herein prescribed, the warrant, unless executed, is void.

Carter Code, sec. 385; Charlton Code, sec. 385.

Return of warrant and delivery of property.

SEC. 2495. That the officer must forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose



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possession it was taken, and of the applicant for the warrant, if they be present, verified by the oath of the officer, to the following effect:

"I, A B, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Carter Code, sec. 386; Charlton Code, sec. 386.

Magistrate to give copy of inventory to whom.

SEC. 2496. That the magistrate must thereupon, if required, deliver a certified copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

Carter Code, sec. 387; Charlton Code, sec. 387.

Proceedings if grounds of issuing warrants controverted.

SEC. 2497. That if the person from whose possession the property was taken controvert the grounds of issuing the warrant, the magistrate must proceed to examine the matter by taking testimony in relation thereto.

Carter Code, sec. 388; Charlton Code, sec. 388.

Property, when to be restored.

SEC. 2498. That if it satisfactorily appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Carter Code, sec. 389; Charlton Code, sec. 389.

Return of magistrate.

SEC. 2499. That the magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the district court at or before the first day of the next term thereof.

Carter Code, sec. 390; Charlton Code, sec. 390.

When person procuring search warrant guilty of misdemeanor.

SEC. 2500. That a person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.

Carter Code, sec. 391; Charlton Code, sec. 391.

Person charged with crime may be searched. Disposition of weapon.

SEC. 2501. That when a person charged with a crime is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the crime, the magistrate may direct him to be searched in his presence, and direct the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

Carter Code, sec. 392; Charlton Code, sec. 392.

## CHAPTER THIRTY-NINE.

### OF PROCEEDINGS IN RELATION TO FUGITIVES FROM JUSTICE.


Sec.
2502. Governor to appoint agent to demand fugitive from justice.
2503. Governor may require report from district attorney.
2504. Payment of expenses of agent.
2505. Fugitive from justice, when to be delivered up by governor.
2506. When fugitive not to be delivered, and when he may be.
2507. Report of district attorney in relation to custody of fugitive.
2508. When and to whom governor to issue warrant for arrest.
2509. Executive warrant to direct officers and magistrate to aid in its execution.
Sec.
2510. Magistrate may issue warrant for arrest of fugitive.
2511. Proceeding for arrest and commitment of fugitive before magistrate.
2512. When magistrate to commit, and for what time.
2513. Magistrate may admit person arrested to bail.
2514. Magistrate to give notice to governor of commitment.
2515. Person arrested to be discharged unless taken under executive warrant.
2516. Person causing arrest liable for costs and expenses.


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Mar. 3, 1899.
30 Stat. L., 1328–1330.

Governor to appoint agent to demand fugitive from justice.

SEC. 2502. That whenever a person charged with treason or other felony, in said District shall flee from justice the governor of said District may appoint an agent to demand such fugitive of the executive authority of any State or Territory of the United States in which he may be found.

Carter Code, sec. 393; Charlton Code, sec. 393.

State *v.* Chadwick (10 Or. Rep., 471). Commonwealth *v.* Dennison (24 How., 95). Taylor v. Taintor (16 Wall., 366).

Governor may require report from district attorney.

SEC. 2503. That before appointing such agent the governor may require the district attorney to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application.

Carter Code, sec. 394; Charlton Code, sec. 394.

Payment of expenses of agent.

SEC. 2504. That the account of the agent, including his actual expenses incurred in performing the service, must be paid by the United States marshal, after being allowed by the district court, out of moneys appropriated to pay the expenses of United States courts.

Carter Code, sec. 395; Charlton Code, sec. 395.

State *v.* Chadwick (10 Or. Rep., 471).

Fugitive from justice, when to be delivered up by governor.

SEC. 2505. That a person charged in any State or Territory of the United States with treason, felony, or other crime, who may flee from justice and be found in said District, must, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of said District, to be removed to the State or Territory making the demand.

Carter Code, sec. 396; Charlton Code, sec. 396.

When fugitive not to be delivered, and when he may be.

SEC. 2506. That when the person demanded is in custody in said District, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he can not be delivered up until he is legally discharged from such custody; but if he be in custody upon civil process only, the governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

Carter Code, sec. 397; Charlton Code, sec. 397.

Report of district attorney in relation to custody of fugitive.

SEC. 2507. That before issuing a warrant for the delivery of a fugitive from justice, the governor may require the district attorney to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

Carter Code, sec. 398; Charlton Code, sec. 398.

When and to whom governor to issue warrant for arrest.

SEC. 2508. That when the governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must issue his warrant under the seal of the District, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time therein designated, to take and transport the fugitive to the border line of said District at the expense of the person demanding the fugitive.

Carter Code, sec. 399; Charlton Code, sec. 399.

Executive warrant to direct officers and magistrate to aid in its execution.

SEC. 2509. That the executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof; and in so doing such officers or magistrates may exercise the

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same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in said District.

Carter Code, sec. 400; Charlton Code, sec. 400.

Magistrate may issue warrant for arrest of fugitive.

SEC. 2510. That a magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of a person charged as provided in section twenty-five hundred and five of this title who shall flee from justice and be found in said District.

Carter Code, sec. 401; Charlton Code, sec. 401.

Proceeding for arrest and commitment of fugitive before magistrate.

SEC. 2511. That the proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this act for the arrest and commitment of a person charged with a crime committed in said District, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

Carter Code, sec. 402; Charlton Code, sec. 402.

When magistrate to commit, and for what time.

SEC. 2512. That if from the examination it appear that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody for a time specified in the commitment, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of said District on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

Carter Code, sec. 403; Charlton Code, sec. 403.

Magistrate may admit person arrested to bail.

SEC. 2513. That the magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of said District.

Carter Code, sec. 404; Charlton Code, sec. 404.

Magistrate to give notice to governor of commitment.

SEC. 2514. That immediately upon the commitment of the person charged the magistrate must inform the governor of said District of the name of the person, the cause of the arrest, and his commitment; and the governor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand may be made for the arrest and surrender of the person charged.

Carter Code, sec. 405; Charlton Code, sec. 405.

Person arrested to be discharged unless taken under executive warrant.

SEC. 2515. That the person arrested must be discharged from custody or bail unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of said District.

Carter Code, sec. 406; Charlton Code, sec. 406.

Person causing arrest liable for costs and expenses.

SEC. 2516. That the person making the complaint to the magistrate is liable for the costs and expenses of the proceedings and for the support in the jail of the person so committed; and unless he advance to the jailer or other proper officer, from week to week during the commitment, a sum sufficient for his support the jailer or other officer having such person in custody may, upon the order of the magistrate, discharge such person from custody.

Carter Code, sec. 407; Charlton Code, sec. 407.

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# CHAPTER FORTY.

## OF JUSTICES OF THE PEACE AND CONSTABLES EX OFFICIO.

Sec.
2517. Additional commissioners to be appointed by court.
2518. Additional deputy marshals.

Mar. 3, 1899.
30 Stat. L., 1330.
Additional commissioners to be appointed by court.

SEC. 2517. That in addition to the commissioners appointed by the President of the United States in pursuance of acts of Congress now in force, or that may be hereafter enacted, the judge of the district court of said District may appoint commissioners, who shall reside at such places as he may designate in the order of appointment, and who shall perform the duties and exercise the powers conferred upon justices of the peace by this act.

Carter Code, sec. 408; Charlton Code, sec. 408.

NOTE.—See 23 Stat. L., sec. 5, p. 25; 30 Stat. L., p. 56, chap. 2.

Additional deputy marshals.
Vol. 23, p. 25.

SEC. 2518. That in addition to the deputies now provided for by the act of Congress entitled "an act providing a civil government for Alaska," approved May seventeenth, eighteen hundred and eighty-four, the United States marshal for said District shall appoint deputies, who shall reside at such places as the judge of the district court shall from time to time designate; and all United States deputy marshals shall be ex officio constables and executive officers of the commissioners' and justices courts, and shall have the powers and discharge the duties of constables under the provisions of this act.

Carter Code, sec. 409; Charlton Code, sec. 409.

NOTE.—See reference under sec. 2517.

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# CHAPTER FORTY-ONE.

## OF JURISDICTION OF JUSTICES' COURTS.

Sec.
2519. Criminal jurisdiction of a justice's court.

Mar. 3, 1899.
30 Stat. L., 1330.
Criminal jurisdiction of a justice's court.

SEC. 2519. That a justice's court has jurisdiction of the following crimes:

First. Larceny, where the punishment therefor may be imprisonment in the county jail or by fine.

Second. Assault, or assault and battery, not charged to have been committed with intent to commit a felony, or in the course of a riot, or with a dangerous weapon, or upon a public officer in the discharge of his duties.

Third. Of any misdemeanor punishable by imprisonment in the county jail, or by fine, or by both.

Carter Code, sec. 410; Charlton Code, sec. 410.

*Subdivision 1*: In re Burkell (2 Alaska Rep., 109, 114).
*Subdivision 3*: U. S. *v.* Folsom (3 Alaska Rep., 228).
*Generally*: In re Bruno Munro (1 Alaska Rep., 282). Mitchell *v.* Galen (1 Alaska Rep., 339). Ex parte Kie (46 Fed. Rep., 485). State *v.* Sly (4 Or. Rep., 279). State *v.* Sheppard (16 Pac. Rep., 483). State *v.* Browning (82 Pac. Rep., 955).

NOTE.—As to jurisdiction conferred by road commissioner's act see Title III, chap. 3, sec. 33.

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# CHAPTER FORTY-TWO.

## CRIMINAL ACTION IN JUSTICES' COURTS.


Sec.
2520. Proceedings in criminal action, how governed.
2521. Criminal action, how commenced; person injured must appear or be subpœnaed.
2522. Complaint to be deemed indictment.
2523. Warrant of arrest.
2524. Warrant, requisitions of.
2525. Defendant, when must plead.
2526. Defendant may plead same pleas as in indictment.
2527. Issue, how tried.
2528. Order to summon jury.
2529. When jurors required to appear.
2530. Officer to summon persons qualified to serve as jurors.
2531. Order for jury, how served.
2532. Deficiency in jurors, how supplied.
2533. Challenges.
2534. Verdict of jury, how given.
2535. Judgment of conviction.
2536. Judgment of acquittal, entry of.
2537. Judgment against prosecutor for costs.
2538. Judgment against prosecutor, how enforced.
2539. Judgment of conviction, entry of.
2540. Entry of judgment and copy of, as evidence.
2541. Judgment of conviction.
2542. Payment of fine and costs.
2543. Money paid on judgment of conviction.
2544. Action to be tried within one day, unless, etc.
2545. Defendant may give bail.
2546. Undertaking of bail, form of.
2547. Proceeding if defendant do not give bail.
2548. Form of commitment.
2549. Proceeding when crime not within jurisdiction of justice.


Mar. 3, 1899.
30 Stat. L., 1331–1334.

Proceedings in criminal action, how governed.

SEC. 2520. That a criminal action in a justice's court is commenced and proceeded in to final determination, and the judgment therein enforced, in the manner hereinbefore provided, except as in this chapter otherwise specially provided.

Carter Code, sec. 411; Charlton Code, sec. 411.

Packwood *v.* State (33 Pac. Rep., 674).

Criminal action, how commenced; person injured must appear or be subpœnaed.

SEC. 2521. That in a justice's court a criminal action is commenced by the filing of the complaint therein, verified by the oath of the person commencing the action, who is thereafter known as the private prosecutor; and no judgment of conviction or acquittal can be given in a criminal action in justice's court unless the person injured appear or be subpœnaed to attend the trial as a witness.

Carter Code, sec. 412; Charlton Code, sec. 412.

U. S. *v.* Meyers (2 Alaska Rep., 158).

State *v.* Langworthy (106 Pac. Rep., 336).

NOTE.—See cases cited under sec. 2382, ante.

Complaint to be deemed indictment.

SEC. 2522. That the complaint is to be deemed an indictment within the meaning of the provisions of chapter seven, title fifteen, of this act, prescribing what is sufficient to be stated in such pleading and the form of stating it.

Carter Code, sec. 413; Charlton Code, sec. 413.

State *v.* Langworthy (106 Pac. Rep., 336).

Warrant of arrest.

SEC. 2523. That upon the filing of the complaint the justice must issue a warrant of arrest for the defendant named therein.

Carter Code, sec. 414; Charlton Code sec. 414.

Warrant, requisitions of.

SEC. 2524. That a warrant of arrest in a criminal action is issued, directed, and executed in all respects as the warrant provided for in chapter thirty-two, title fifteen, of this act except that it must be made returnable only before the justice who issues it.

Carter Code, sec. 415; Charlton Code sec. 415.

Defendant, when must plead.

SEC. 2525. That when the defendant is brought before the justice, the complaint must be read to him, and he must be required to plead thereto.

Carter Code, sec. 416; Charlton Code sec. 416.

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Defendant may plead same pleas as in indictment.

SEC. 2526. That the defendant may plead the same plea as upon an indictment. His plea must be oral and entered in the docket. If the defendant refuse to plead, the justice must enter the fact, together with the plea of not guilty on his behalf.

Carter Code, sec. 417; Charlton Code sec. 417.

NOTE.—See sec. 2208, ante.

Issue, how tried.

SEC. 2527. That upon a plea other than a plea of guilty, if the defendant do not then demand a trial by jury, the justice must proceed to try the issue.

Carter Code, sec. 418; Charlton Code, sec. 418.

Order to summon jury.

SEC. 2528. That if a trial by jury be demanded, the justice must make an order in writing, directed to the United States marshal or any deputy, commanding him to summon twelve persons to serve as jurors in the action, at a time and place to be named therein.

Carter Code, sec. 419; Charlton Code, sec. 419.

In re Bruno Munro (1 Alaska Rep., 285).

When jurors required to appear.

SEC. 2529. That the order shall require the jurors to appear before the justice forthwith, or at some future time to which the trial of the issue may be postponed.

Carter Code, sec. 420; Charlton Code, sec. 420.

Officer to summon persons qualified to serve as jurors.

SEC. 2530. That the officer serving the order for a jury must do so impartially by selecting only such persons as he knows, or has good reason to believe, are qualified according to law to serve as jurors in the court to which they are summoned and in the particular action for which they are selected.

Carter Code, sec. 421; Charlton Code, sec. 421.

Order for jury, how served.

SEC. 2531. That the officer must serve the order by giving notice to each person selected of the time and place he is required to appear, and for what purpose, and return the same according to the direction therein, with the names of the persons summoned, verified by his own certificate.

Carter Code, sec. 422; Charlton Code, sec. 422.

Deficiency in jurors, how supplied.

SEC. 2532. That if a sufficient number of jurors do not appear at the time and place required, or if any of those appearing are peremptorily challenged, or upon a challenge for cause found disqualified, the justice must order the proper officer to summon a sufficient number of other qualified persons, until the jury is completed.

Carter Code, sec. 423; Charlton Code, sec. 423.

Challenges.

SEC. 2533. That each party is entitled to take challenges for cause, and to two peremptory challenges.

Carter Code, sec. 424; Charlton Code, sec. 424.

NOTE.—As to challenges generally see chap. 14 of this title.

Verdict of jury, how given.

SEC. 2534. That when the jury have agreed upon a verdict, they must deliver the same to the justice publicly, who shall enter it in his docket.

Carter Code, sec. 425; Charlton Code, sec. 425.

Judgment of conviction.

SEC. 2535. That when the defendant pleads guilty, or is convicted, either by the justice or the jury, the justice must give judgment thereon for such punishment as may be prescribed by law for the crime.

Carter Code, sec. 426; Charlton Code, sec. 426.
Mayhew *v.* City of Eugene (104 Pac. Rep., 727).

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Judgment of acquittal, entry of.

SEC. 2536. That when the defendant is found not guilty, either by the justice or a jury, he must be immediately discharged; and if it appear to the justice that the prosecution was malicious or without probable cause, he must make an entry to that effect in his docket.

Carter Code, sec. 427; Charlton Code, sec. 427.

Judgment against prosecutor for costs.

SEC. 2537. That upon making the entry prescribed in the last section, the justice must give judgment against the private prosecutor for the costs and disbursements of the action, and require him to pay the same or give satisfactory security therefor, by a written undertaking, with one or more sureties, to be approved by the justice, to pay the same to the justice within thirty days from the date of such judgment.

Carter Code, sec. 428; Charlton Code, sec. 428.

Judgment against prosecutor, how enforced.

SEC. 2538. That the judgment may be enforced against the prosecutor, if he do not pay the same or give the required security therefor, in all respects as a judgment for a fine in a criminal action; but if he give the required security therefor, said judgment may be enforced, at the expiration of the thirty days, against the prosecutor and his sureties in the undertaking in all respects as a judgment for money in a civil action.

Carter Code, sec. 429; Charlton Code, sec. 429.

Judgment of conviction, entry of.

SEC. 2539. That when a judgment of conviction is given, either upon a plea of guilty or upon a trial, the justice must enter the same in the docket substantially as follows:

"Justice's court for the precinct of , District of Alaska, division No. .

"The United States of America v. A B

(day of the month and year).

"The above-named A B having been brought before me, C D, a commissioner and ex officio justice of the peace, in a criminal action, for the crime of (briefly designate the crime), and the said A B having thereupon pleaded 'not guilty' (or as the case may be), and been duly tried by me (or by a jury, as the case may be), and upon such trial duly convicted, I have adjudged that he be imprisoned in the county jail days and that he pay the cost of the action, taxed at dollars (or that he pay of fine of dollars and such costs and be imprisoned in such jail until such fine and costs be paid, not exceeding days, as the case may be).

"C D,

"Commissioner and ex officio Justice of the Peace."

If the defendant has pleaded guilty, instead of the paragraph commencing "and the said A B," and ending "upon such trial duly convicted," the entry must state substantially as follows: "And the said A B having been thereof duly convicted upon a plea of guilty."

(Carter Code, sec. 430; Charlton Code, sec. 430.

In re Burkell (2 Alaska Rep., 112). U. S. *v.* Madigan (3 Alaska Rep., 72–75). "The court held in this case that costs are taxable against a convicted defendant in a criminal action before a commissioner."

Entry of judgment and copy of, as evidence.

SEC. 2540. That an entry of judgment and the transcript thereof, made or filed as in the last two sections provided, is conclusive evidence of the facts stated therein.

Carter Code, sec. 431; Charlton Code, sec. 431.

Judgment of conviction.

SEC. 2541. That the judgment must be executed by the United States marshal or any deputy, upon receiving a certified copy of the

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entry of judgment, and such copy shall also be deemed an execution against the property of the defendant for the purpose of collecting the amount of any fine or costs mentioned therein.

Carter Code, sec. 432; Charlton Code, sec. 432.

U. S. *v.* Madigan (3 Alaska Rep., 72).

Payment of fine and costs.

SEC. 2542. That if the fine and costs, or any part thereof, be paid before commitment, they must be paid to the justice, and thereafter to the officer in whose custody the defendant may be at the time of such payment, which officer must immediately pay the same to the justice.

Carter Code, sec. 433; Charlton Code, sec. 433.

Money paid on judgment of conviction.

SEC. 2543. That any money paid to the justice upon a judgment in a criminal action must first be applied to the costs of the action, and the remainder, by such justice, paid to the clerk of the proper division of the district court, to be deposited as provided by law.

Carter Code, sec. 434; Charlton Code, sec. 434.

Action to be tried within one day, unless, etc.

SEC. 2544. That when the defendant is brought before the justice upon the warrant of arrest, the action must be tried within one day thereafter, unless continued for cause.

Carter Code, sec. 435; Charlton Code, sec. 435.

Defendant may give bail.

SEC. 2545. That at any time before the commencement of the trial, or during the progress thereof, the justice must admit the defendant to bail if he require it, and take bail of him accordingly.

Carter Code, sec. 436; Charlton Code, sec. 436.

Undertaking of bail, form of.

SEC. 2546. That the bail must be given by a written undertaking, executed by one or more sufficient sureties, approved by the justice, in substantially the following form:

"Justice's court for the precinct of , District of Alaska, division No. .

"A criminal action having been commenced on the day of , hundred and , in the justice court aforesaid, against A B, for the crime of (designating it generally), and he having been duly admitted to bail by the justice of said court in the sum of dollars,

"We, C D, of (stating his place of residence and occupation), and E F, of (stating the like as to him), hereby undertake that the above-named A B shall appear at the time and place fixed for the trial of the above-mentioned action, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment and surrender himself in execution thereof; or if he fail to perform either of those conditions, that we will pay to the United States the sum of dollars (inserting the sum in which the defendant is admitted to bail)."

Carter Code, sec. 437; Charlton Code, sec. 437.

Proceeding if defendant do not give bail.

SEC. 2547. That if the defendant do not give bail when brought before the justice upon the warrant of arrest, or during the progress of the trial, he must be continued in the custody of the officer, or, if the court be held in the vicinity of a jail, be committed to jail, to answer the action as the justice may direct.

Carter Code, sec. 438; Charlton Code, sec. 438.

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Form of commitment.

SEC. 2548. That the commitment must be signed by the justice, with his name of office, and may be substantially as follows:

"Justice's court for the precinct of , District of Alaska, division. No. .

"In the name of the United States of America.

"To the United States marshal or any deputy:

"An order having this day been made by me that A B be committed for trial in a criminal action against said A B for the crime of (designating it generally), you are hereby commanded to receive him into your custody, and detain him accordingly, or until he be otherwise legally discharged.

"Dated at , this day of , hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Carter Code, sec. 439; Charlton Code, sec. 439.

Proceeding when crime not within jurisdiction of justice.

SEC. 2549. That if, in the progress of the trial, it shall appear to the magistrate that the defendant has committed a crime not within the jurisdiction of a justice's court, such magistrate must dismiss the action, and state in the entry the reasons therefor, and hold the defendant upon the warrant of arrest, and proceed to examine the charge as upon an information of the commission of crime.

Carter Code, sec. 440; Charlton Code, sec. 440.

U. S. v. Folsom (3 Alaska Rep., 229).

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# CHAPTER FORTY-THREE.

## OF APPEALS IN CRIMINAL ACTIONS.


Sec.
2550. Appeal in criminal action, when taken.
2551. Appeal, how taken.
2552. Undertaking for appeal.
2553. Appeal taken by defendant only.
2554. Justice must transmit transcript.
2555. Undertaking for stay of proceedings.
2556. Allowance of appeal and return of execution.
2557. Qualification and justification of sureties.
2558. Appeal, when perfected and how tried.
2559. Judgment in the appellate court.
2560. Defective undertaking, how cured.
2561. Errors of law, how reviewed.


Mar. 3, 1899.
30 Stat. L., 1334–1335.
Appeal in criminal action, when taken.

SEC. 2550. That an appeal may be taken from a judgment of conviction given in a justice's court, in a criminal action, to the district court, except when the same is given on a plea of guilty, as prescribed in this chapter, and not otherwise.

Carter Code, sec. 441; Charlton Code, sec. 441.

In re Bruno Munro (1 Alaska Rep., 285). Feller v. Feller (66 Pac. Rep., 468).

Appeal, how taken.

SEC. 2551. That an appeal may be taken within thirty days from the date of the entry of the judgment by serving a notice upon the district attorney or upon the private prosecutor in the action and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Carter Code, sec. 442; Charlton Code, sec. 442.

Weitzman v. Handy (1 Alaska Rep., 658). U. S. v. Larsen (2 Alaska Rep., 578). Kingsbury v. Pac. Coal & Trans. Co. (3 Alaska Rep., 41). Strang v. Keith (1 Or. Rep., 312). Neppath v. Jordan (10 Pac. Rep., 341). Starks v. Stafford (12 Pac. Rep., 670). Heiney v. Heiney (78 Pac. Rep., 1088). State v.

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Hanlon (48 Pac. Rep., 353). Crawford v. Wist (39 Pac. Rep., 218). U. S. v. Florence (1 Alaska Rep., 676). Cartier v. U. S. (148 Fed. Rep., 804). Chipman v. Bronson (3 Or. Rep., 320). State v. Zingsen (7 Or. Rep., 137). Lancaster v. McDonald (12 Pac. Rep., 374). Lemmons v. Huber (77 Pac. Rep., 836). State v. Connolley (90 Pac. Rep., 902). State v. Sup. Ct. (34 Pac. Rep., 922). Back v. Thompson (57 Pac. Rep., 419). Hamilton v. Butler (54 Pac. Rep., 200).

NOTE.—See additional cases cited under sec. 1829, chap. 97, Code of Civil Procedure, Title XIII.

Undertaking for appeal.

SEC. 2552. That the undertaking of the appellant must be given, with one or more sureties approved by the justice, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal.

Carter Code, sec. 443; Charlton Code, sec. 443.

U. S. v. Florence (1 Alaska Rep., 677). | U. S. v. Sheep Creek John (1 Alaska Rep., 682).

Appeal taken by defendant only.

SEC. 2553. That an appeal can only be taken by the defendant.

Carter Code, sec. 444; Charlton Code, sec. 444.

Hill v. State (32 Pac. Rep., 160). | State v. Jones (22 Pac. Rep., 840).

NOTE.—See 23 Stat. L., chap. 53, p. 25, sec. 7.

Justice must transmit transcript.

SEC. 2554. That if the defendant is in custody at the time the appeal is allowed, the justice must make the proper transcript and deliver it to the clerk of the district court by the first day of the next term thereof, or transmit the same to such clerk by mail or other safe conveyance by the first day of such term.

Carter Code, sec. 445; Charlton Code, sec. 445.

Undertaking for stay of proceedings.

SEC. 2555. That an allowance of an appeal does not stay the proceedings on the judgment unless the defendant give the undertaking of bail on appeal as provided in section twenty-three hundred and twenty-eight, title fifteen, of this act.

Carter Code, sec. 446; Charlton Code, sec. 446.

U. S. v. Florence (1 Alaska Rep., 677). | Cartier v. U. S. (148 Fed. Rep., 804); 78 C. C. A., 494; 3 Alaska Rep., 728).

Allowance of appeal and return of execution.

SEC. 2556. That when an appeal is taken the justice must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not; and when the proceedings are stayed, if an execution has been issued to enforce the judgment, the justice must recall the same by written notice to the officer holding the execution, and thereupon it must be returned, and all the property taken thereon and not sold released; and if the defendant is in custody, he must be discharged therefrom.

Carter Code, sec. 447; Charlton Code, sec. 447.

Cartier v. U. S. (148 Fed. Rep., 804; 78 C. C. A., 494; 3 Alaska Rep., 728).

Qualification and justification of sureties.

SEC. 2557. That all sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest; and if required by the adverse party, must justify before the justice in like manner.

Carter Code, sec. 448; Charlton Code, sec. 448.

Starks v. Stafford (12 Pac. Rep., 670). | Holcomb v. Teal (4 Or. Rep., 353).

NOTE.—See sec. 2326, 2327, 2328, chap. 22, of this title.

Appeal, when perfected and how tried.

SEC. 2558. That from the filing of the transcript with the clerk of the district court the appeal is perfected, and the action is to be deemed pending therein and for trial upon the issue tried in the jus-

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tice's court. The appellate court has the same authority to allow an amendment of the pleadings on an appeal in a criminal action that it has on an appeal in a civil action.

Carter Code, sec. 449; Charlton Code, sec. 449.

U. S. *v.* Meyers (2 Alaska Rep., 158, 161). "Where an accused is arrested on a criminal complaint made before a commissioner tried, and found guilty, and appeals to the district court, upon his objection to the form of the complaint, it may be amended under above section, and he may be tried de novo on the amended charge."

Dickson *v.* Johnson (74 Pac. Rep., 394). Woods *v.* Oregon S. L. R. Co. (81 Pac. Rep., 235). Cartier *v.* U. S. (148 Fed. Rep., 804; 78 C. C. A., 494; 3 Alaska Rep., 728). Hager *v.* Knapp (78 Pac. Rep., 671). Byers *v.* Ferguson (68 Pac. Rep., 5).

Judgment in the appellate court.

SEC. 2559. That when an appeal is dismissed the appellate court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and effect thereof.

Carter Code, sec. 450; Charlton Code, sec. 450.

Cartier *v.* U. S. (148 Fed. Rep., 804; 78 C. C. A., 494; 3 Alaska Rep., 728).

Defective undertaking, how cured.

SEC. 2560. That an appeal can not be dismissed on the motion of the appellee on account of the undertaking therefor being defective if the appellant before the determination of the motion to dismiss will execute a sufficient undertaking and file the same in the appellate court, upon such terms as may be deemed just.

Carter Code, sec. 451; Charlton Code, sec. 451.

U. S. *v.* Florence (1 Alaska Rep., 677). U. S. *v.* Sheep Creek John (1 Alaska Rep., 682). Heiney *v.* Heiney (73 Pac. Rep., 1038).

Errors of law, how reviewed.

SEC. 2561. That no provision of this chapter in relation to appeals or right of appeal must be construed so as to prevent the defendant in a justice's court from having the judgment reviewed in the district court for errors in law appearing upon the face of such judgment or the proceedings connected therewith.

Carter Code, sec. 452; Charlton Code, sec. 452.

Moore *v.* Rennick (1 Alaska Rep., 173). Feller *v.* Feller (66 Pac. Rep., 468). Hager *v.* Knapp (78 Pac. Rep., 671). McAnish *v.* Grant (74 Pac. Rep., 396).

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# CHAPTER FORTY-FOUR.

## OF MISCELLANEOUS PROVISIONS IN RELATION TO CRIMINAL PROCEEDINGS IN JUSTICES' COURTS.

Sec.
2562. Qualification of bail.
2563. Security for costs.
2564. Who may act as attorney.
2565. Special deputies.
2566. Fees of officers, witnesses, jurors, interpreters, etc.
2567. "District attorney" construed.
2568. Increased bond of clerk and marshal.
2569. Tax on business and trades.
2570. Penalty for evasion of tax.
2571. Limiting sale of intoxicating liquors and defining term "intoxicating liquor."
2572. Who shall issue licenses.
2573. Restrictions imposed before license will issue.
2574. Before license issues applicants for must file petition.
2575. No intoxicating liquor to be sold to minors. To whom licenses may be issued.
2576. License to be issued for one year.
2577. Two classes of licenses—wholesale and retail.
2578. Licenses to be displayed.
2579. Marshals and commissioners shall have privilege of examining premises, etc.
2580. Druggists and apothecaries not to sell intoxicating liquors, etc.
2581. Penalty for selling liquors without license.
2582. Penalty for violation of provisions of license.

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Sec.
2583. Prosecutions for violations of provisions of this act shall be on information filed, etc.
2584. Where liquor shall be sold.
2585. When application for renewal of license must be made
2586. Provisions of this act not to interfere with Federal internal-revenue laws.
2587. Licensee not to allow female, minor, or person convicted of crime to sell, etc.
2588. Interpretation of words "singular" and "plural."
2589. When provisions of this act shall take effect.
2590. Imposing less than minimum penalty.

Mar. 3, 1899.
30 Stat. L., 1335–1341.

Qualification of bail.

SEC. 2562. That the qualifications of bail in criminal actions in justices' courts, and the justification thereof, shall be conducted in the manner hereinbefore provided for like proceedings in the district court.

Carter Code, sec. 453; Charlton Code, sec. 453.

NOTE.—See secs. 2327, 2328, 2329, ch. 22, of this title.

Security for costs.

SEC. 2563. That the justice may, in his discretion, require the private prosecutor in a criminal action to give security for costs and disbursements before filing or receiving a complaint therein.

Carter Code, sec. 454; Charlton Code, sec. 454.

Who may act as attorney.

SEC. 2564. That any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding other than the subpœna.

Carter Code, sec. 455; Charlton Code, sec. 455.

Special deputies.

SEC. 2565. That whenever it appears to a justice that any process or order authorized to be used or made by this act will not be served for want of an officer, such justice may appoint any suitable person not being a party to the action to serve the same; such appointment may be made by an indorsement on the process or order in substantially the following form and signed by the justice, with his name of office: "I hereby appoint A B to serve the within process, or order," as the case may be.

Carter Code, sec. 456; Charlton Code, sec. 456.

Nor. Pac. Cycle Co. *v.* Thomas (38 Pac. Rep., 307).

Fees of officers, witnesses, jurors, interpreters, etc.

SEC. 2566. That the judge of the district court or the judges of the respective divisions of the district court for the District of Alaska shall forthwith prepare and, with the approval of the Attorney General, promulgate necessary rules and regulations not in conflict with this act or the general laws of the United States for the guidance and control of the court commissioners acting as such, or acting as ex officio justices of the peace, probate judges, coroners, or civil magistrates within said District; and he or they shall also, with the approval of the Attorney General, prepare and promulgate a bill of fees and rates of mileage and allowances for jurors, witnesses, interpreters, and other officers or persons designated to serve process, whose fees, mileage, or other allowances are not specially provided for by law, which said rules, regulations, rates of mileage, allowances, and fees so fixed, after they have been approved by the Attorney General and promulgated by his authority, shall have the force and effect of law, and the same may be modified or changed with the approval of the Attorney General: *Provided*, That in no case shall the fees, mileage, and allowances prescribed be in excess of double the fees, mileage, and allowances allowed for like services in the State of Oregon.

*Proviso.* Limit.

Carter Code, sec. 457; Charlton Code, sec. 457.

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"District attorney" construed.

SEC. 2567. That wherever the words "district attorney" occur in this act they shall be construed to mean the United States attorney for said District or any division thereof.

Carter Code, sec. 458; Charlton Code, sec. 458.

Increased bond of clerk and marshal.

SEC. 2568. That whenever the business of the courts in the District of Alaska shall make it necessary, in the opinion of the Attorney General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed seventy-five thousand dollars shall be given when required by the Attorney General, who shall fix the amount thereof.

Carter Code, sec. 459; Charlton Code, sec. 459.

Tax on business and trades. Vol. 30, p. 1336. Amended June 6, 1900, 31 Stat. L., 331.

SEC. 2569. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:

"Abstract offices, fifty dollars per annum.

"Banks, two hundred and fifty dollars per annum.

"Boarding houses having accommodations for ten or more guests, fifteen dollars per annum.

"Brokers (money, bill, note, and stock), one hundred dollars per annum.

"Billiard rooms, fifteen dollars per table per annum.

"Bowling alleys, fifteen dollars per annum.

"Breweries, five hundred dollars per annum.

"Bottling works, two hundred dollars per annum.

"Cigar manufacturers, twenty-five dollars per annum.

"Cigar stores or stands, fifteen dollars per annum.

"Drug stores, fifty dollars per annum.

"Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored.

"Electric-light plants, furnishing light or power for sale, three hundred dollars per annum.

"Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

"Freight and passenger transportation lines, propelled by mechanical power registered in the District of Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the District of Alaska, one dollar per ton per annum on net tonnage, customhouse measurement, of each vessel.

"Gas plants, for heat or light, for sale, three hundred dollars per annum.

"Hotels, fifty dollars per annum.

"Halls, public, ten dollars per annum.

"Insurance agents and brokers, twenty-five dollars per annum.

"Jewelers, twenty-five dollars per annum.

"Mines: Quartz mills, three dollars per stamp per year.

"Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of

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under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

"Meat markets, fifteen dollars per annum.

"Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

"Physicians, itinerant, fifty dollars per annum.

"Planing mills, fifty dollars per annum when not part of a sawmill.

"Pawnbrokers, three hundred dollars per annum.

"Peddlers, twenty-five dollars per annum.

"Patent-medicine venders (not regular druggists), fifty dollars per annum.

"Railroads, one hundred dollars per mile per annum on each mile operated.

"Restaurants, fifteen dollars per annum.

"Real estate dealers and brokers, fifty dollars per annum.

"Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, registered in Alaska or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, customhouse measurement, of each vessel.

"Sawmills, ten cents per thousand feet on the lumber sawed.

"Steam ferries, one hundred dollars per year.

"Toll road or trail, two hundred dollars per annum.

"Tobacconists, fifteen dollars per annum.

"Tramways, ten dollars for each mile or fraction thereof per annum.

"Transfer companies, fifty dollars per annum.

"Taxidermists, ten dollars per annum.

"Theaters, one hundred dollars per annum.

"Waterworks, furnishing water for sale, fifty dollars per annum.

Amends Carter Code, sec. 460; Charlton Code, sec. 460.

In re Pac. Cold Storage Co. (1 Alaska Rep., 429). In re Hill's Bottling License (1 Alaska Rep., 436). In re Stadie Bros. License (1 Alaska Rep., 436). In re C. H. Wynn-Johnson (1 Alaska Rep., 630). U. S. *v.* Binns (1 Alaska Rep., 553). Waters *v.* Campbell (4 Saw. Rep., 121; 1 Alaska Rep., 773). Corbus *v.* Alaska Treadwell Co. (99 Fed. Rep., 334; 1 Alaska Rep., 774). U. S. *v.* Nelson (29 Fed. Rep., 202; 1 Alaska Rep., 724). Pac. Steam Whaling Co. *v.* U. S. (187 U. S. Rep., 447; 2 Alaska Rep., 697). Pac. Coast S. S. Co. *v.* U. S. (187 U. S. Rep. 454; 2 Alaska Rep., 697). Binns *v.* U. S. (194 U S. Rep., 486; 2 Alaska Rep., 656, 675). Wynn-Johnson *v.* Shoup (194 U. S. Rep., 496; 2 Alaska Rep., 656). Stewart *v.* Wash. & Alaska S. S. Co. (187 U. S. Rep., 466; 2 Alaska Rep., 674). Corbus *v.* Alaska Treadwell Co. 187 U. S. Rep., 455; 2 Alaska Rep., 674). U. S. *v.* John J. Sesnon (3 Alaska Rep., 596, 599, 600). Town of Nome *v.* Schneider (3 Alaska Rep., 58). Freeding *v.* Allen (173 Fed. Rep., 263; 97 C. C. A., 429; 3 Alaska Rep., 781).

NOTE.—For additional licenses for canning, curing, etc., fish products, see sec. 259 of Title VII, chap. 3, of this code.

Mar. 3, 1899.

30 Stat. L., 1335–1341.

Penalty for doing business without license.

SEC. 2570. That any person, corporation, or company doing or attempting to do business in violation of the provisions of the foregoing section, or without having first paid the license therein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in a sum equal to the license required for the business, trade, or occupation; and for the second offense, a fine equal to double the amount of the license required; and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months: *Provided*, That each day business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense: *And provided further*, That any person, firm, or corporation hitherto engaged in any business within the said District of Alaska men-

*Provisos.*

Each day to constitute distinct offense.

Opportunity to apply for license.

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tioned in the last preceding section, or that may engage in such business at any time prior to the first day of July, anno Domini eighteen hundred and ninety-nine, shall not be deemed to have violated the provisions of this section and the last preceding section if, in the opinion of the court or judge thereof, such person, firm, or corporation shall not have had reasonable time and opportunity to apply for license as hereinbefore required.

Carter Code, sec. 461; Charlton Code, sec. 461.

In re C. E. Wynn-Johnson (1 Alaska Rep., 630). | U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 596, 600).

Limiting sale of intoxicating liquors and defining term "intoxicating liquor."

SEC. 2571. That no person, corporation, or company shall sell, offer for sale, or keep for sale, traffic in, barter, or exchange for goods in said District of Alaska any intoxicating liquors, except as hereinafter provided; but this shall not apply to sales made by a person under provisions of law requiring him to sell personal property. Wherever the term "intoxicating liquors" is used in this act it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, hoochinoo, and all spirituous, vinous, malt, and other fermented or distilled liquors.

Carter Code, sec. 462; Charlton Code, sec. 462.

U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 727). U. S. *v.* Seveloff (2 Saw. Rep., 311; 1 Alaska Rep., 766). Endleman *v.* U. S. (86 Fed Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 767). In re C. E. Wynn-Johnson (1 Alaska Rep., 630). U. S. v. John J. Sesnon Co. (3 Alaska Rep., 596).

Clerk district court to issue licenses.
Vol. 30, p. 1337.
Amended June 6, 1900, 31 Stat. L., 332.

SEC. 2572. That the licenses provided for in this act shall be issued by the clerk of the district court or any subdivision thereof in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon: *Provided*, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney General may approve, and all moneys received for licenses by him or them under this act shall, except as otherwise provided by law, be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe.

*Provisos.*
Clerks' bond, etc.

Amends Carter Code, sec. 463; Charlton Code, sec. 463.

Pac. St. Whaling Co. *v.* U. S. (187 U. S. Rep., 447; 2 Alaska Rep., 697). Pac. Coast S. S. Co. *v.* U. S. (187 U. S. Rep., 454; 2 Alaska Rep., 697). In re Hill's Bottling License (1 Alaska Rep., 436). U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 596).

Consent to issue by residents over 21 years of age required.
Vol. 30, p. 1338, amended.
Amended Feb. 6, 1909, 35 Stat. L., 601.

SEC. 2573. That before any license is granted, as provided in this act in relation to intoxicating liquor, it shall be shown to the satisfaction of said court that a majority of the white male and female citizens over the age of twenty-one years, within two miles of the place where intoxicating liquor is to be manufactured, bartered, sold, and exchanged or bartered, sold, and exchanged, have, in good faith, consented to the manufacture, barter, sale, and exchange or the barter, sale, and exchange of the same; and the burden shall be upon the applicant or applicants to show to the satisfaction of said court that a majority of the white male and female citizens of twenty-one years of age or more have consented thereto, and no license shall be granted in the absence of such evidence: *Provided*, That no license shall be granted for the manufacture, barter, sale, or exchange of intoxicating liquors except within incorporated towns and such other

*Provisos.*
Limited to incorporated towns.

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towns, settlements, or communities in which a duly appointed United States commissioner or deputy marshal shall reside, except that the respective district judges may, in their discretion, grant licenses to the keepers of regularly established road houses on main traveled post roads and post trails in the District: *And provided*, That when it is made to appear that a majority of said white male and female citizens over the age of twenty-one years of any one place have consented to the manufacture, barter, sale, and exchange or the barter, sale, and exchange of intoxicating liquor no further proof of the consent of the citizens of the place where such intoxicating liquor is to be manufactured, bartered, sold, and exchanged or bartered, sold, and exchanged will be required for twelve months thereafter.

Road houses.

No further proof of consent required for one year.

Amends Carter Code, sec. 464; Charlton Code, sec. 464.

SEC. 2574. That every person applying for a license to sell intoxicating liquors in said District shall file with the clerk of the court a petition for such license, verified by the applicant's oath, and such petition shall be considered and acted upon by the court in the order in which the same was filed and numbered. Said petition shall contain:

License petition to be filed. Vol. 30, p. 1338, amended. Amended Feb. 6, 1909, 35 Stat. L., 602. Oath of applicant.

"First. The name and residence of the applicant and how long said applicant has resided there.

Contents of petition.

"Second. The particular place for which license is desired, designating the same by reference to street, locality, or settlement in such manner that the exact location at which such sale of liquor is proposed may be clearly and definitely determined from the description given.

"Third. The statement that said applicant is a citizen of the United States or has declared his intention to become such; that said applicant is not less than twenty-one years of age, and that such applicant has not been, since the passage of this act, adjudged guilty of violating the laws governing the sale of intoxicating liquors or laws for the prevention of crime in said District.

"Fourth. That said applicant intends to, and if so licensed will, carry on such business for himself and not as agent for any other person.

Business limited to applicant.

"Fifth. That said applicant intends to, and if so licensed will, superintend in person the management of the business licensed.

Personal management required.

"Sixth. That said applicant will not conduct, maintain, or permit the maintenance of any gambling, dance hall, or bawdy house on or in connection with the premises nor permit any female or minor in or about the rooms where liquor is sold or served.

Gambling, etc., prohibited.

"That if any false material statement is made in any part of such petition or affidavit the petitioner or petitioners shall be deemed guilty of perjury and, upon conviction thereof, said license shall be revoked and said licensee shall be subject to the penalties provided by law for the crime of perjury.

Punishment for perjury.

"That should it appear to the district judge that any of the statements above enumerated, required to be made in the petition, are untrue at the time of application for such license, such application shall be denied.

Application to be denied.

"That should it appear to the district judge, after the granting of any such license, that any of the statements above enumerated, required to be made in the petition, are untrue, or that the applicant is permitting any of the things to be done or exist on or about the premises contrary to the statements required in the petition, it shall be the duty of such judge to forthwith enter an order revoking such license, and all license moneys deposited by the applicant shall be thereby forfeited, and it shall be the duty of the United States mar-

Revocation.

Forfeiture of deposit.



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shals and their deputies and the United States attorneys and their deputies in said District to investigate and report to the district judge any violations of any of the provisions of this section: *Provided*, That this act shall not be so construed as to prevent any inkeeper or any person operating a hotel in good faith from receiving as guests women and minors.

*Proviso.*
Women and minors.

Amends Carter Code, sec. 465; Charlton Code, sec. 465.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 181). | U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 596).

Mar. 3, 1899.
30 Stat. L., 1335–1341.

SEC. 2575. That under the license issued in accordance with this act no intoxicating liquors shall be sold, given, or in any way disposed of to any minor, Indian or intoxicated person, or to an habitual drunkard.

No sale of liquor to minors, etc.

Carter Code, sec. 466; Charlton Code, sec. 466.

In re Burton (1 Alaska Rep., 112). U. S. *v.* Ash (75 Fed Rep., 651; 1 Alaska Rep., 765). U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 596). U. S. *v.* Stofello (76 Pac. Rep., 611). State *v.* Gulley (70 Pac. Rep., 385). State *v.* Constantine (86 Pac. Rep., 384).

NOTE.—See sec. 2022, chap. 8, Criminal Code.

License to be issued for one year.

SEC. 2576. That no license under this act shall be issued for a greater period than one year, and no license can be transferred by the licensee to any other person except with the written consent of the court by authority whereof the same shall issue, upon application thereto in writing.

Carter Code, sec. 467; Charlton Code, sec. 467.

Licenses, wholesale and retail.
Vol. 30, p. 1339, amended.
Amended Feb. 6, 1909, 35 Stat. L., 603.

SEC. 2577. That the liquor licenses authorized and provided for by this act shall be of two classes, namely, wholesale and barroom. Every applicant for a license shall deposit the amount of the license fee with the clerk of the court at the time of filing his application therefor; and if upon consideration of such application by the court, as provided for in this act, the court shall determine to grant the license prayed for, it shall notify the clerk of the court and the applicant in writing and the applicant shall thereupon receive his license.

Fees.

"That the fee for a wholesale license shall be two thousand dollars per annum, and for a barroom or retail license one thousand dollars per annum: *Provided*, That the fee for a retail license for road houses on regular post roads or trails where the population within two miles of the place where the business is to be conducted does not exceed fifty people, or for a steamboat or steamer operating on the inland rivers of Alaska during the season of open navigation, shall be five hundred dollars per annum: *Provided*, That said steamboat or steamer shall not be authorized to sell intoxicating liquor while in port or dock: *And provided*, That the words towns, camps, or settlements, as used in this act shall be construed to embrace the population within a radius of two miles of the place wherein the business is to be conducted under the license.

*Provisos.*
Steamboats, etc.
Sale of intoxicants while in port prohibited.
Towns, etc, defined.

Retail license.

"That a retail or barroom license shall be required for every hotel, tavern, boat, barroom, or other place in which intoxicating liquors are sold at retail.

Wholesale liquor business restrictions.

"That a wholesale license shall only authorize the licensee to sell distilled, malt, or fermented liquors, wines, and cordials in quantities not less than four gallons, not to be drunk upon the premises where sold; and no such license shall be granted until it is satisfactorily shown that the place where it is intended to carry on such business is properly arranged for selling such liquor as merchandise.

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"That every place where distilled, malt, or fermented wines, liquors, or cordials are sold in quantities as prescribed for retail dealers by section thirty-two hundred and forty-four of the Revised Statutes of the United States, to be drunk upon the premises, shall be regarded as a barroom; and the possession of malt, distilled, fermented, or any other intoxicating liquors, with the means and appliances for carrying on the business of dispensing the same to be drunk where sold, shall be prima facie evidence of a barroom within the meaning of this act, and the license therefor shall be known as a barroom license: *Provided*, That no license shall be granted for the sale of liquors at either wholesale or retail in any other than a substantial building which shall have cost for construction not less than five hundred dollars."

Meaning of "barroom."

R. S., sec. 3244, p. 662.

*Proviso.* Building where sold.

**Amends Carter Code, sec. 468; Charlton Code, sec. 468.**

*For violation of the internal revenue law, see*: U. S. *v.* Ames Merch. Co. (2 Alaska Rep., 74). U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 765). Endleman *v.* U. S. (86 Fed. Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 767). United States *v.* Johnson (193 Fed. Rep., 986).

Mar. 3, 1899.

30 Stat. L., 1335–1341.

SEC. 2578. That every person receiving a license to sell under this act shall frame it under glass and place it in a conspicuous place in his chief place of sale of such liquor, so that anyone entering such place of sale may easily read such license.

License to be displayed.

**Carter Code, sec. 469; Charlton Code, sec. 469.**

**U. S. *v.* Powers & Robertson (1 Alaska Rep., 181).**

Sec. 2579. That all applicants for license and persons holding licenses shall allow the clerk of the court, or any United States marshal or deputy United States marshal, or any United States commissioner, full opportunity and every facility to examine at any time during business hours the premises where intoxicating liquor is sold, and for which a license has been asked or has been granted.

Examination of premises.

**Carter Code, sec. 470; Charlton Code, sec. 470.**

SEC. 2580. That druggists and apothecaries shall not be required to obtain license under the provisions of this act, but they shall not sell intoxicating liquors, nor compound nor mix any composition thereof, except upon the written prescription of a reputable physician, nor more than once on any one prescription of the physician; and every druggist or apothecary shall keep a book for the special purpose, and enter therein the date of every sale of intoxicating liquor made by him, the person to whom sold, the kind, quantity, and price thereof, and purpose for which it was sold; and such book shall be at all times open to the inspection of the United States marshal or any deputy marshal, any United States commissioner, the collector of customs or any deputy collector of customs for the District of Alaska, and shall be produced when required; and any failure to comply with the provisions of this section shall render such druggist or apothecary so failing liable to the same penalties as if he had sold intoxicating liquors without a license.

Restrictions on druggists.

—record of sales.

**Carter Code, sec. 471; Charlton Code, sec. 471.**

SEC. 2581. That anyone engaging in the sale of intoxicating liquors, as specified in this act, in the District of Alaska, who is required by it to have a license as herein specified, without first having obtained a license to do so as herein provided, or any person who shall engage in such sale in any portion of the District where the sale thereof is prohibited, upon conviction thereof shall be fined not less than one hundred dollars nor more than two thousand dollars, or be imprisoned for not less than one month nor more than one year; and upon every

Penalty for selling liquors without license.

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subsequent conviction of a like offense shall, in addition to the penalty above named, be imprisoned not less than two months nor more than one year.

Carter Code, sec. 472; Charlton Code, sec. 472.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 180, 186, 187). U. S. *v.* Folsom (3 Alaska Rep., 228). United States *v.* Johnson (193 Fed. Rep., 986).

Penalty for violating license.

SEC. 2582. That any person, having obtained a license under this act, who shall violate any of its provisions, shall, upon conviction of such violation, be fined not less than fifty dollars nor more than two hundred dollars, and upon every subsequent conviction of such violation during the year for which such license is issued shall be fined a like amount, and in addition to such fine shall pay a sum equal to twenty-five per centum of the amount of the fine imposed for the offense immediately preceding, and have his license revoked, and in case of nonpayment of the fines and penalties above named shall be imprisoned for a period of time not exceeding six months, or till the same are paid. That after second conviction no license shall thereafter be granted to said party: *Provided*, That no minor under sixteen years of age shall be allowed to enter any place where liquors are sold other than a hotel, without the consent of the parent or guardian of such minor.

*Proviso.* Minors not admitted where liquor sold.

Carter Code, sec. 473; Charlton Code, sec. 473.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 181, 182).

Procedure.

SEC. 2583. That prosecutions for violations of the provisions of this act shall be on information filed in the district court or any subdivision thereof, or before a United States commissioner, by the United States marshal or any deputy marshal, or by the district attorney or by any of his assistants. Or such prosecution may be by and through indictment by grand jury, and it shall be the duty of either of said officers, on the representation of two or more reputable citizens, to file such information, or to present the facts alleged to constitute violations of the law to the grand jury.

Carter Code, sec. 474; Charlton Code, sec. 474.

U. S. *v.* Powers & Robertson (1 Alaska Rep., 183, 184, 187). U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 726). Endleman *v.* U. S. (86 Fed. Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 756). Nelson *v.* U. S. (30 Fed. Rep., 112; 1 Alaska Rep., 759). United States *v.* Johnson (193 Fed. Rep., 986). Booth *v.* United States (187 Fed. Rep., 283).

U. S. *v.* Folsom (3 Alaska Rep., 227, 229). "Under above section the district attorney or the marshal has the power to say whether or not the commissioner shall take jurisdiction of that particular crime; and if that power is exercised by electing to prosecute through the grand jury, he has the right to all the machinery of the law to aid him, and the commissioner should, when such election has been made, act in accordance therewith, or he may be compelled by mandamus to act and give effect to the remedy provided by the statute."

U. S. *v.* John J. Sesnon Co. (3 Alaska Rep., 598). "In this case the court held that the Code of Criminal Procedure in Alaska does not specially require a criminal information of the nature of a common-law information to be verified by the oath of the marshal or prosecuting attorney."

Proximity to schools, etc

SEC. 2584. That license for any of the purposes specified shall not be granted to any person to conduct such business within four hundred feet of a public schoolhouse, private school, or house of religious worship, except in such places of business as may have been located previous to the erection or occupation of such schoolhouse, private school, or house of religious worship owned or occupied in the District of Alaska, measured between the nearest entrance to each by the shortest course of travel between such place of business and the schoolhouse, private school, or house of religious worship.

Carter Code, sec. 475; Charlton Code, sec. 475.

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Renewal of licenses, etc.

SEC. 2585. That all applicants who have had a license during the preceding year shall apply for a renewal of such license on or before November first of each license year, and shall be permitted to continue business until license shall be granted or refused by the court or judge thereof; but in all cases of refusal to grant license such proportion of the license fee as may have become due shall be deducted and retained from the sum deposited therefor as the time from the first day of November to the date of such refusal bears to the entire license year, and no other person shall be permitted to conduct said business until a license is issued therefor.

Carter Code, sec. 476; Charlton Code, sec. 476.

Internal-revenue laws unaffected.

SEC. 2586. That nothing in this act shall in any way repeal, conflict, or interfere with the public general laws of the United States imposing taxes on the manufacture and sale of intoxicating liquors for the purpose of revenue and known as the "internal-revenue laws."

Carter Code, sec. 477; Charlton Code, sec. 477.

U. S. *v.* Ames Merch. Co. (2 Alaska Rep., 74). U. S. *v.* Ash (75 Fed. Rep., 651; 1 Alaska Rep., 765). Endleman *v.* U. S. (86 Fed Rep., 456; 30 C. C. A., 186; 1 Alaska Rep., 767).

Employment of minors, etc., to retail forbidden.

Sale to minors.

SEC. 2587. That no licensee under a barroom license shall employ, or permit to be employed, or allow any female or minor or person convicted of crime, to sell, give, furnish, or distribute any intoxicating drinks or any admixture thereof, ale, wine, or beer to any person or persons. And no licensee in any place shall knowingly sell or permit to be sold in his establishment any intoxicating liquor of any kind to any person under the age of twenty-one years, under the penalty, upon due conviction thereof, of forfeiting such license, and no person so forfeiting his license shall again be granted a license for the term of two years.

Carter Code, sec. 478; Charlton Code, sec. 478.

Interpretation of words.

SEC. 2588. That in the interpretation of this act words of the singular number shall be deemed to include their plurals, and that words of the masculine gender shall be deemed to include the feminine, as the case may be.

Carter Code, sec. 479; Charlton Code, sec. 479.

When provisions of this act shall take effect.

SEC. 2589. That the provisions of this act shall take effect and be in force on and after the first day of July, anno Domini eighteen hundred and ninety-nine.

Carter Code, sec. 480; Charlton Code, sec. 480.

Imposing less than minimum penalty.

SEC. 2590. That in any case where a conviction occurs, except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this act manifestly too severe, impose a less penalty, either of fine or imprisonment, or both: *Provided*, That in any such case the court shall cause the reasons for its action to be set forth at large on the record in the case.

*Proviso.* Reasons to be recorded.

Carter Code, sec. 481; Charlton Code, sec. 481.

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# TITLE XVI.

## MISCELLANEOUS LAWS.


Sec.
2591. Census of Alaska.
2592. Continuation of office.
2593. Female nurse corps.
2594. Codification of laws applicable to Alaska.


Mar. 3, 1899
30 Stat. L., 1016.
Census of.

SEC. 2591. The Director of the Census is also authorized and directed to make suitable provisions for the enumeration of the population and products of Alaska, for which purpose he may employ supervisors and enumerators or special agents as he may deem necessary.

June 6, 1900.
31 Stat. L., 329.
Continuance in office of existing officials.

SEC. 2592. The officers properly qualified and actually discharging official duties in the district at the time of the approval of this act may continue to act in their respective official capacities until the expiration of the terms for which they were respectively appointed unless sooner removed.

Carter Code, sec. 25.

Mar. 4, 1912.
37 Stat. L., 72.
Female nurse corps.

SEC. 2593. That the superintendent and members of the Female Nurse Corps when serving in Alaska or at places without the limits of the United States may be allowed the same privileges in regard to cumulative leaves of absence and method of computation of same as are now allowed by law to Army officers so serving.

Aug. 24, 1912.
37 Stat. L., 518.
Codification.

SEC. 2594. That the Committee on Territories of the Senate and the Committee on Territories of the House of Representatives are hereby authorized, empowered, and directed to jointly codify, compile, publish, and annotate all the laws of the United States applicable to the Territory of Alaska, and said committees are jointly authorized to employ such assistance as may be necessary for that purpose; and the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to cover the expenses of said work, which shall be paid upon vouchers properly signed and approved by the chairmen of said committees.



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TO THE

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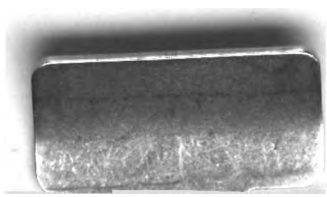
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